EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS - WESTERN DIVISION

IN THE MATTER OF:	.	Case #12-19882-hjb
	.	
NEW ENGLAND COMPOUNDING	.	
PHARMACY, INC.,	.	Springfield, Massachusetts
	.	**July 24, 2013**
Debtor.	.	1:04 p.m.

TRANSCRIPT OF HEARING ON:
(#166) AMENDED APPLICATION OF CHAPTER 11 TRUSTEE TO EMPLOY AND RETAIN HARRIS BEACH PLLC AS SPECIAL COUNSEL;
(#167) MOTION OF CHAPTER 11 TRUSTEE FOR AN ORDER AUTHORIZING HIM TO BE REPRESENTED BY SPECIAL LOCAL COUNSEL IN THE ORDINARY COURSE OF BUSINESS;
(#263) MOTION OF CHAPTER 11 TRUSTEE FOR AN ORDER (I) ESTABLISHING BAR DATES FOR FILING PROOFS OF CLAIM; (II) APPROVING CERTAIN ADDITIONAL DOCUMENTATION REQUIREMENTS AND PROCEDURES FOR PERSONAL INJURY TORT AND WRONGFUL-DEATH CLAIMS; (III) APPROVING THE FORM AND MANNER OF NOTICE; AND FOR ADDITIONAL RELATED RELIEF;
(#326) MOTION OF BERTRAM WALKER BRYANT, JR. AND THE CREDITORS' COMMITTEE FOR A DECLARATION OF DEBTOR INSOLVENCY

BEFORE THE HONORABLE HENRY J. BOROFF

APPEARANCES:

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I N D E X

(At 1:04 p.m.)

THE CLERK: All rise.

THE COURT: Good afternoon. Please be seated. Sorry for the technical delays.

THE CLERK: Case number 12-19882, New England Compounding Pharmacy, Inc.; a hearing on the amended application of the Chapter 11 trustee to employ and retain Harris Beach PLLC, as special counsel; a hearing on the motion of the Chapter 11 trustee for an order authorizing him to be represented by special local counsel in the ordinary course of business; a hearing on the motion of the Chapter 11 trustee for an order establishing bar dates for filing proofs of claim, approving certain additional documentation requirements and procedures for personal-injury tort and wrongful-death claims, and approving the form and manner of notice, and for additional relief; as well as a motion of Bertram Walker Bryan, Jr. and the creditors' committee, for a declaration of debtor insolvency.

Beginning with Ms. Bachtell on my right, could I ask counsel present in the courtroom in Springfield, please identify themselves as well as who they represent.

MS. BACHTELL: Good afternoon, Your Honor. Paula Bachtell for the U.S. Trustee.

MR. STERNKLAR: Good afternoon. Jeffrey Sternklar from Duane Morris, representing Paul Moore, the Chapter 11

trustee.

MR. BALDIGA: Good afternoon, Your Honor. William Baldiga, Brown Rudnick, for the official committee of unsecured creditors.

MR. GALLIGAN: Good afternoon, Your Honor. Mike Galligan from Tennessee, representing Walter Bryant, Jr., as well as a number of other creditors.

THE COURT: Okay.

MR. STERNKLAR: Thank you, Your Honor. Your Honor, first, I want to thank you for your accommodations to us over the past few weeks, with scheduling. We've had to move these hearings around and we're not unmindful of the burden that imposes on the Court, and we thank you for your patience with that.

Second, there are essentially three matters on for hearing today: There's the trustee's motion to establish a bar date; there are two professional-retention motions that are somewhat related; and there is a motion by the creditors' committee and Mr. Galligan's client, for a declaration of insolvency. Notwithstanding the flurry of papers and the widespread participation, I believe we've made significant process in resolving many of the issues that will arise with respect to all three motions. Unfortunately, I can't tell you we've resolved all issues. It will be my hope that I can outline what the remaining issues are, and they can be

disposed of in some orderly fashion.

With Your Honor's indulgence, I believe Mr. Galligan has a plane he needs to catch, so, with your indulgence, we would take the insolvency motion first.

THE COURT: Sure.

MR. BALDIGA: Thank you, Your Honor.

THE COURT: For the benefit of those on the telephone, I'm afraid we'll have to keep reintroducing who we are as speaker.

MR. BALDIGA: Absolutely, Your Honor. And this is William Baldiga, Brown Rudnick, counsel for the official committee of unsecured creditors.

And, Your Honor, we're here on the motion, as announced, with respect to the finding that this debtor is insolvent; hearkens back to, for some of us, pre-Code days, perhaps when those things were -- the last time any of us had seen those. And perhaps the Tennessee statute also goes back to the days before the Code, in the 1970s, because it seems to be a legacy type of thing that I've never seen before and I'm sure for the Court is somewhat novel as well.

Mr. Galligan and I, Your Honor, think that the better way to present this to the Court is first for me to introduce you to Mr. Galligan, who does represent Mr. Bryant, and he could explain a little bit about the background of the Tennessee statute. We have resolved the trustee's objection,

but I would like to speak to the other remaining objections, and hopefully this will be something that the Court can understand where we come from. Thank you.

THE COURT: Thank you.

MR. BALDIGA: And, Your Honor, I'm not even sure whether we have filed a motion for the pro hac admission of Mr. Galligan.

MR. GALLIGAN: I sent it to --

MR. BALDIGA: Then I think we have. I'm sorry.

THE COURT: All right. Okay.

MR. BALDIGA: If not, we will check the docket and certainly do that this week.

THE COURT: Let's move on.

MR. BALDIGA: Thank you.

MR. GALLIGAN: Good afternoon, Your Honor. As I said earlier --

THE COURT: Again --

MR. GALLIGAN: -- I'm Mike Galligan --

THE COURT: I'm sorry. Yes. Go ahead.

MR. GALLIGAN: -- from Tennessee. I represent Walker Bryant, Jr., who's the husband of Margaret Bryant, who died on September the 18th, 2012; she died as the result of a shot of MPA that was manufactured by NECC. Additionally, I'm a member of the OCC; would like to say that I've been a -- and assure the Court that I've been a strong supporter of the

bankruptcy resolution of this matter, since the inception. We filed our first lawsuit against NECC only. We now are looking to file against other affiliates, other pain -- the pain clinic, et cetera. I have other clients, but this is the one I'm here on today.

I'm asking for a declaration of insolvency; that's because of a Tennessee statute that I will go into in just a few moments. I don't think it's contested that NECC's insolvent. None of the pleadings that have responded to our motion have mentioned it at all. I think it is -- I had an old judge tell me one time -- and I'm not suggesting you're an old judge by any means -- I had --

THE COURT: I was married --

MR. GALLIGAN: -- but when I was a young lawyer, that nothing is obvious in the law. But there's not much more obvious than we're asking the Court to make a declaration of something that is pretty obvious to everybody: that NECC is insolvent. There've been over -- last time I checked, over 741 injuries, 61 deaths, of which my client's wife was one of them. The -- so I don't think that's contested.

So we're just asking the Court to do really what's obvious. Now, why are we asking that? 29-28-106 -- and let me go over it, if I could, that statute, with you -- in Tennessee it says, and this is on the cause of action of strict liability that we would like to bring against the St.

Thomas Neurological Outpatient clinic, and we have -- I don't know that the Court wants to hear all the grounds about it or that this is the place and time, but this statute says, "No product-liability action, as defined in 29-280-102", which is the statute defining products-liability actions, "shall be commenced or maintained against any seller other than the manufacturer unless" -- the first three are totally irrelevant to our issues today; 4 and 5 may be discussed. 5 is the one that we're here about; it says, "unless [the] manufacturer has been judicially declared insolvent". So it isn't just a case, according to the statute here, that they are insolvent, but must be judicially declared insolvent. We came to this Court on this issue because this Court is certainly more, and is eminently, involved in this. And NECC, to bring it in any other court, would have to be made a party, we believe, and there's a stay concerning that.

So this is, it seems to me, the most efficient court for everyone, all of the plaintiffs, in Tennessee. And all the plaintiffs' lawyers -- just about all have contacted me about it -- are interested in this. And this would stave off multiple filings, lots of expense, just for this Court to declare what is most obvious, really.

Now, I have read, and I'm sure the Court has read, some of the briefs that came in against it, and some will mention other things, such as, could we not do it under number

4 above, on that, without the necessity of this. But one thing Plaintiffs' lawyers, as this Court I'm sure is aware, want to do is avoid issues that can later lead to reversal, later lead to problems down the road. This is simple, it's nice, and it does it, but however, under number 4, the manufacturer, distributor of the product or part in question is not subject to service of process in this state. If it ended there, we would be fine, because NECC's not subject to process -- service of process in Tennessee. But it says "and" the long-arm statutes of Tennessee do not serve as the basis for obtaining service of process.

Now, there have been a couple cases cited that state, well, maybe they could, but that's under another statute, and that was an older statute, 29-28-106(b), in which it said -- instead of "and", it was "or". So those cases are totally inapplicable to the argument today.

So, without delaying the issue, we want to get around the substantive pre-filing requirement; and to do that, it would help us, and I think it would save a lot of expense, if we could have an order declaring NECC insolvent as of the day of their filing and subsequently. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Baldiga?

MR. BALDIGA: Thank you, Your Honor. William Baldiga again, for the committee.

The committee takes seriously its obligations here, Your Honor, to represent the creditor body generally. We do not represent any particular victim, even victims who happen to be members of our committee. We do not represent any of the clinics in their own capacity, even if they have an indemnity claim. But we are here, and we joined this motion, for important reasons that are benefits to the estate, and that's the stress I want to make.

In Tennessee alone, Your Honor, there have been 153 reported meningitis cases and at least 15 deaths. Tennessee is a particular area that has been devastated by the tainted MPA. And as Mr. Galligan said, at the present time, only a small fraction of those suits have been filed, but we do have a one-year statute of limitations that arises as early as September; so we are nearly weeks away from that statute of limitations.

If this motion were allowed, this does not create any liability; it's solely to minimize the expense and to increase the efficiency as to the assertion -- ability to assert liability, subject to whatever defenses may lie. So, allowance of this motion does not create liability in the least and is not a determination by this Court or a view by the committee or by the trustee or anyone else that liability should apply or that the statute has validity on its merits, these claims come under the statute, or anything else in that

regard.

If the motion is denied, these plaintiffs, as well as whatever injuries may lie in Tennessee, will each be faced with a quandary of complying with the statute of limitations. I can understand why they may want to at least assert the statutory liability. Whether or not down the road there's ever a trial on any of those cases or a motion to dismiss, that day will perhaps come. But each of them will them need to seek relief somewhere in state court, other federal courts, this court, maybe a hodgepodge of courts, as to that declaration. That almost certainly implicates this estate in each of those. There could be inconsistent rulings; there could be ancillary relief that is joined. And it would seem to be a mess, and mess equals expense, and it's expense to this estate in two respects: one, it requires the trustee and the committee to understand what's going on in what may be a couple of hundred or more requests; second, the request is likely to be made in the context of litigation against parties, such as clinics, that have indemnity claims against this estate, for evaluating and responding to those requests. And there would be a multiplicity by 100 or 200 factor as to the expense that we've already incurred here. And there's no benefit to this estate to having that tremendous expense, even if a lot of them consist of motions for relief to this Court.

We have also, Your Honor, worked with the trustee

carefully. The trustee did file an objection, and one or the other objections was focused on an important purpose of whatever relief here should be to maximize the incentive on the many Tennessee personal-injury and victim death cases, to be centralized in the MDL.

As Your Honor knows, it is the stated goal of the trustee and of the committee, from the outset of this case, to centralize as many cases in the MDL as possible. And this motion, with a revision especially to the order, after much discussion with the trustee, will do that. And, Your Honor, I'd like to hand up -- and I have copies for others, I think, as many as others want to see that. But I certainly will read it clearly over the phone for everyone, because I think at least one of the objecting parties is present by telephone. May I approach, Your Honor?

THE COURT: Yes, please.

MR. BALDIGA: I refer to decretal paragraph 4. There are two changes, Your Honor; one change, which is not delineated in pencil here, is to eliminate what was romanette iii, and that's eliminated altogether. Romanette iii provided -- well, let me just start at the -- romanette i -- this is the application of this -- is that this order would apply to actions that have been filed or will be filed directly in the MDL proceeding. There is a question that has been raised by some parties as to whether there is related-to

jurisdiction as to cases that do not name NECC or an affiliate of NECC; so ii are -- is that this would apply to cases that have been or will be removed or transferred to the MDL proceeding. And my penciled-in comment -- so -- and I'll read it, then, in full, by agreement with the trustee, so that ii is complete -- romanette ii would be, "subject to removal or transfer to the MDL proceeding, that have been or will be removed or transferred to the MDL proceeding".

And then romanette iii is eliminated altogether. Romanette iii previously referred to actions filed in some other court, for which there was a consent to remove or transfer. Frankly, Mr. Galligan's client would have very much preferred that but, in the spirit of compromise and, again, working hand in hand with the trustee to maximize the incentive for all to have these claims administered in the MDL proceeding, we've agreed on this language.

THE COURT: After the clause "subject to removal or transfer to the MDL proceeding", instead of the comma, wouldn't it be clearer if it said "and"?

MR. BALDIGA: I'm happy to do that.

THE COURT: Okay.

MR. STERNKLAR: That's fine, Your Honor.

THE COURT: All right.

MR. BALDIGA: And let me ask -- I have three or four other copies.

Are there others in the courtroom that want a copy of this?

Doesn't seem to be the most popular matter in the court today.

Your Honor, I would then turn -- because one of those directly relates this language to the two objections that have been filed, and I believe that at least one of the objectors is -- and perhaps both -- on the telephone; I believe that neither is in the court. St. Thomas Outpatient Center, docket number 373, filed an objection with two grounds: one is that the motion is moot because these product liability claims will at some point fail on the merits, and so I think it's a futility type of objection. I stress, and I stress again, this is not a position by the trustee, by the committee or anyone else, including by Mr. Galligan's client, for this Court to make any finding whatsoever. There's been no effort as to the merits of this; it is solely a procedural pre-filing requirement to facilitate and minimize the cost to the estate, of claims being asserted.

And I -- so I want to clarify on the record; I thought the motion was clear in that regard but, certainly, St. Thomas and every other party here deserves to have it be without doubt whatsoever that there's nothing here that were to pre-judge the merits of anything.

Second, a -- second objection by St. Thomas is that

the committee here has a duty to Tennessee healthcare providers, on account of implicitly that they have the same type of indemnity contribution claims that I mentioned earlier. These -- and you'll hear later in the bar-date motion, these indemnity claims, or potential indemnity claims, that are now being incurred, are a primary driver of everything that the trustee and the committee talk about. And while we respect very much that St. Thomas and others have these indemnity claims, and we're trying to minimize those, we do not owe a fiduciary or other duty to any creditor. We owe a fiduciary duty to the creditor body consisting of all general unsecured claims more generally. And while we may side on this or other issues in a way that favor or disfavor certain groups of creditors, we do so only because we believe that it's best for the creditor body generally.

So we do owe a duty to St. Thomas and to Mr. Galligan's client and to every other general unsecured claim but not one that precludes us from taking positions on this or any other motion in the case, if we think it benefits creditors generally. And we are, after a great deal of discussions -- this -- the filing of this motion followed eight weeks of discussion with the trustee. So we take that duty seriously.

The second objection, Your Honor, is the Inspira Health Network, docket 391, and two objections are noted: the

same duty of loyalty that I mentioned -- I obviously won't repeat that again -- and secondly, at paragraph 11, asks that the relief entered by this Court is -- would be limited to cases filed in or going to the MDL. And it so happens that the resolution of the trustee's objection does exactly that. So we've satisfied the second objection, I believe. Obviously, Inspira can speak for itself but, as to that objection, I think we are -- we've done exactly what they asked.

So, Your Honor, it's an odd motion, one that I would not have anticipated, even in a case that has quite a few twists and turns already, but one that, again, the benefit to the estate is very real. And, happy to answer any questions the Court may have, but believe it's something that is very important to get done, and get done today, so that the 160, 170-odd claimants who we've been telling 'Hold off. Don't incur expense. Don't make the estate incur expense' can get done what they need to do without putting the estate through that ringer.

THE COURT: Thank you.

MR. BALDIGA: Thank you, Your Honor.

THE COURT: Is counsel for St. Thomas on the phone?

MR. TARIO: Yes, sir. This is Chris Tario from Nashville.

THE COURT: All right, sir, do you want to speak to

your objection, if you still have one?

MR. TARIO: Yes, sir, and I appreciate the Court's indulgence, especially by phone. First and foremost, I think that I do take exception, respectfully, to the representation by Mr. Galligan that the objection did not object to the notion that NECC is insolvent. On page 1 of our response, footnote 2, we do object to the finding that NECC is insolvent. And frankly, based on what is in front of the Court, respectfully, I don't believe that there's sufficient proof that, at this point at least, based on the record that the Court's deciding upon, NECC is insolvent under the test set out in the motions.

So, first and foremost, I guess I take exception with Mr. Galligan's first comment that he started off with. The remainder of our objections to the substance of the motion were characterized accurately by counsel who spoke before me. The relief that the creditors' committee seeks is -- they're seeking a remedy -- a nonmeaningful remedy and that if the Court were to grant this motion and these cases were filed under this theory of liability, it's not going to -- it's not tenable as a matter of law in Tennessee to maintain products liability actions against healthcare providers.

So it is a utility argument, and I would respectfully submit that granting the motion allowing suits to be filed under this theory, and then having to rule on motions

to dismiss, adds expense to the case when in the first place the claim is not tenable as a matter of law. So that is the first grounds for our objection.

Related, we -- as we put in our papers, the exclusive remedy under the -- under Tennessee law, for any claim against a healthcare provider, related to the provision of health care, is pursuant to the Health Care Liability Act. So even if the Court grants this motion, Tennessee claimants cannot -- contrary to I think what was suggested in the motion, cannot walk out tomorrow and file products liability claims; pre-suit notice still has to be served on healthcare defendants, under our Title 29, Chapter 26. So that in -- if the motive or the grounds for the motion is that the claims will be filed immediately and need to be filed immediately, they can't; the plaintiffs still have to comply with the pre-suit notice period requirements.

And lastly, Your Honor, the creditors' committee -- and I understand the position taken by the creditors' committee as articulated a moment ago but, even if you characterize the duty of the creditors' committee to all creditors generally to exercise that duty to the body generally, I believe, respectfully, the case law requires that the committee not favor certain classes of creditors over other classes of creditors. We are -- us in Tennessee and other clinics and hospitals are creditors. We not only have

an indemnity claim against NECC; we also have breach-of-warranty claims against NECC for providing us these unfit products. So we do have claims against NECC, we do fit within the class of creditors, and we are owed a duty as part of the body. So we would respectfully submit that that is grounds for denial of the motion that the creditors' committee, in bringing the motion as a joining movant, is breaching that duty.

So we would respectfully submit, for all those reasons and the reasons we set out in our response, that the motion be denied.

THE COURT: Thank you.

And Inspira, does it have counsel on the phone?

MR. O'NEIL: Good afternoon, Your Honor. Joseph O'Neil for Inspira.

Your Honor, with respect to the changes to the proposed order, that was our main concern, that the claims here would be limited to the MDL proceeding. We discussed this yesterday with the trustee and we appreciate his efforts in coordinating with the committee counsel in order to revise the order to reflect that. Given those changes, I believe that we are okay with respect to the order, and we would agree that, as long as it's limited to the MDL, we're okay with it going forward.

THE COURT: Does anyone else on the telephone wish

to be heard with respect to this motion?

All right, hearing nothing, the Chapter 11 trustee?

MR. STERNKLAR: Your Honor, just briefly. The change in the order resolves our objection; it squarely places the risk on the plaintiffs that they will be unable to get the case transferred or removed or asserted in the MDL; that's a risk they should bear, not the trustee. It's important to the trustee's overall goals here that case -- as many cases as possible get consolidated into the MDL. So we read the order now as providing that only those cases heard and determined in the MDL, or at least transferred to the MDL, will have the benefit of this finding. And with that, we no longer object.

THE COURT: Okay. Does the United States Trustee have a view?

MS. BACHTELL: U.S. Trustee has no opposition, Your Honor.

THE COURT: I'll enter the order. I think it makes sense from the perspective of judicial economy, for the reasons mentioned by counsel for the creditors' committee, and it also promotes economy for the affected creditors. I see no prejudice for the estate. The insolvency of this debtor is apparent; it has been so from the outset. And in fact, at the very first hearing in this case, counsel for the debtor reported that, in his view, in the debtor's view, the insurance proceeds would be very much insufficient to meet the

debtor's claims.

With respect to the issue raised by St. Thomas Outpatient Neurological Center and others who joined in that motion, with respect to whether or not these claims, if I granted the motion, would then be ripe for filing in their home court, claims in the bankruptcy case may be contingent, they may be unliquidiated, but they are still claims. And it is irrelevant that there may in fact be additional hoops which those creditors would have to overcome in order to file civil actions. All that is important is that they are, or may be, owed monies under the definition of claims in the Bankruptcy Code.

And then finally, with respect to the concern raised about the duty of the creditors' committee, I have to agree with the committee that its fiduciary duty is only to general unsecured creditors as a body, not to any particular unsecured creditor or even any class of unsecured creditors. Now, indeed, on occasion, creditors' committees are granted the authority to seek preference recoveries against individual creditors who are members of their constituency, and that is not viewed as a conflict, because, in the end, the responsibility of the committee is to seek the highest possible dividend for general unsecured creditors as a whole.

Accordingly, I will enter this order. Is it your intention that I sign it with the language marked up, or would

you prefer to send something in?

MR. BALDIGA: Unless the Court has some preference; otherwise, we're fine with this as marked.

THE COURT: Okay. Hold on just a moment.

All right, one down.

MR. GALLIGAN: Your Honor, may I --

MR. BALDIGA: Your Honor, may Mr. Galligan have leave to go to the airport?

MR. GALLIGAN: I have --

THE COURT: Well, I will miss you, Mr. Galligan, but if you have to go --

MR. GALLIGAN: Thank you, Your Honor.

THE COURT: -- go on.

MR. GALLIGAN: I got to go down South where it's been cooler than it has been --

THE COURT: Yeah. Safe travel, sir.

MR. STERNKLAR: Thank you, Your Honor. With Your Honor's indulgence, I would propose we take up the bar-date motion next.

THE COURT: Okay. You think that's easier than the employment motions?

MR. STERNKLAR: I don't know that's easier or not, but it certainly --

THE COURT: Let's do the employment motions.

MR. STERNKLAR: Do the employment motion first?

THE COURT: Yes, yes.

MR. STERNKLAR: Okay. Your Honor, there are two employment motions on for hearing: There is the motion -- the trustee's motion to retain Harris Beach as special counsel, pursuant to 327(e), and the related motion to retain local counsel as ordinary-course professionals. The easier one perhaps is the local counsel; they aren't doing much right now; the cases are stayed as against the estate. But under local law, we need local counsel in those jurisdictions. And these are people identified by Mr. Fern at Harris Beach as being particularly capable in this area. We would ask Your Honor to allow that motion, as there's no objection to it pending. I don't know that there's anything remarkable or unusual in there, or certainly wasn't intended to be if there was.

THE COURT: Is there anyone who wishes to be heard with respect to that motion?

(No response)

THE COURT: All right, hearing nothing -- do you have an order for me to sign, or do you want me to simply endorse it as granted?

MR. STERNKLAR: Thank you, Your Honor.

THE COURT: Which? Want me to endorse it as --

MR. STERNKLAR: Endorse it as granted --

THE COURT: Okay.

MR. STERNKLAR: -- is fine. Thank you, Your Honor.

THE COURT: Thank you.

MR. STERNKLAR: Next is the motion of trustee to retain Harris Beach. Harris Beach is a firm that was identified and retained by the debtor's insurer, Pharmacist Mutual Insurance Company to provide insurance defense coverage pre-petition to the insurers under the policy who were the debtor and certain individuals who are collectively referred to as insiders in our motion.

When this case was first filed, it became apparent or when the trustee was first appointed, it became apparent to the trustee that Mr. Fern possesses a unique combination of both expertise and credibility. He's a registered pharmacist, he has handled numerous complex mass tort cases on the defense side. He also is credible. He has the respect of, I think, not just the trustee, but of the plaintiffs' attorneys as well and he is for all the reasons we've articulated in the various papers we've filed, we believe, uniquely qualified to represent the trustee and be the point person.

Now, we heard Your Honor loud and clear multiple times before. We think we heard them; it is important to the trustee that he be able to retain Mr. Fern. So we propose changes to his retention. Originally we had proposed that the trustee would be jointly represented by Harris beach with the insiders. That's no longer proposed. Now what's proposed is

that Harris Beach will solely represent the trustee; solely with respect to the insurance defense matters, as outlined in the application. His sole duty of loyalty will be to the trustee. The insiders, as we call them, have retained separate counsel.

As Mr. Fern made clear in his declaration, all of the information he has about the underlying merits of this case are, in his view, not confidential. He obtained them from his own investigation review of the documents. We need just to clarify that, of course, it's not in the estate's interest that anyone be able to claim he's violating or breaching any privileges that may inure to the benefit of the insiders. That would open up a lot of things we don't want to open up.

But there's no information that he has that he can't share because he's obtained all the relevant information from his own investigation. So it's not as if there's anything about the merits of these defenses that he can't use, he can't share, he can't do with whatever he wants, notwithstanding his prior representation of these individuals. Well, of course, he won't disclose things, the contents of his communications with the insiders because those are privileged. The information that is the subject of those communications is information he has acquired from other sources and he can share with the trustee.

So we've been mindful of the concerns expressed with respect to other professionals that there be no dual loyalties. We've been mindful of the concerns expressed that there be no restrictions on the trustee's ability to share information -- for professionals' ability to share information with the trustee with respect to the matters on which they're employed. We've tried and we believe we've successfully resolved those problems with this proposed change to the employment arrangement. And we've provided a supplemental declaration for Mr. Fern. I think we'll add another supplemental declaration to clarify the point of the privilege because we didn't say that affirmatively in our declaration, but we would ask Your Honor to approve his retention on those revised terms.

I believe the last point is, Your Honor, if Your Honor wants him to file fee applications, he's perfectly prepared to do that, notwithstanding that he's being paid solely by the insurer and it's not what is colloquially referred to as a wasting policy. So payments for defense costs don't affect the limits -- the obligation or the amounts available for indemnity under the policy. But he's perfectly prepared to do that if Your Honor wants.

THE COURT: To what extent may Harris Beach's loyalties be distracted by the fact that he's being paid by the insurer?

MR. STERNKLAR: I don't think at all. This is not uncommon. If anything, he's an insurance defense counsel, he's not getting involved in insurance coverage issues. He's staying completely out of that. PMIC has retained Mr. Mikels and Mintz Levin to deal with coverage issues. Indeed, this is even more beneficial than the usual circumstance where defense counsel is paid by an insurer because in many of those cases, the policy wastes. In this case, it does not.

THE COURT: Okay. Thank you.

MR. STERNKLAR: Thank you, Your Honor.

THE COURT: Does --

MR. STERNKLAR: May I have one moment, Your Honor?

THE COURT: Yes.

(Pause)

MR. STERNKLAR: Your Honor, perhaps in an overabundance of caution, the counsel for the insiders has requested an opportunity to review the supplemental declaration I mentioned that Mr. Fern will file with respect to privilege to be sure it says what I've said it will say. We -- I don't have a problem; I fully anticipate it will say what I said it would say.

THE COURT: Well, I'll handle that at the end.

MR. STERNKLAR: Okay, thank you, Your Honor.

THE COURT: Thank you. Does anyone else wish to be heard with respect to this motion?

Mr. Baldiga?

MR. BALDIGA: Thank you, Your Honor; William Baldiga for the Official Committee again.

Your Honor, we've talked through this extensively with the trustee. We think the accommodation that he has made in deference to the Court's comments and informal objections by various parties, the U.S. Trustee and others, does address those concerns in a very responsible way. Mr. Fern adds considerable value here, and we think that it helps to drive the case forward for this to be allowed. So we support this fully.

THE COURT: United States Trustee?

MS. BACHTELL: Thank you, Your Honor. Paula Bachtell for the U.S. Trustee.

Your Honor, initially, the U.S. Trustee was concerned about the retention. The UST's office has worked closely with the Chapter 11 trustee and there is an amended pleading before the Court. And now that the representation is limited and a fee app will be filed that will allow all of us to review it and to object with respect to any issues of unreasonableness, it's a close call, Your Honor. The UST is relying on the business judgment of the Chapter 11 trustee. We feel he's in the best position to make the decision, and in light of that, the UST has not filed an objection to this retention application as amended. Thank you.

THE COURT: Thank you.

Sir? If you'd identify yourself for the record and for those on the phone?

MR. DAILEY: Yes, thank you, Your Honor. My name is William Dailey, Bill Dailey. I'm a lawyer in Boston with Sloan and Walsh. We expect to be filing an appearance on behalf of the individual defendants in the MDL action.

I would make the observation that we inure to Pharmacist Mutual. We have had no relationship with them in the past. We've had very good conversations with them as we get ready to come in. But I think that Mr. Fern brings a unique perspective here. He is someone that they are very comfortable with.

THE COURT: You're speaking for or against the motion?

MR. DAILEY: I'm speaking for.

They are very comfortable with -- and I think that is important as I try to develop some background information. I asked about resolution and whether or not there was any discussion about resolution. I was told that I should go very slowly in that regard and that I should -- was not going to be provided with a lot of information. But nevertheless, I think Mr. Fern brings with him the ability to speak with Pharmacist Mutual which is a relatively small mutual company, but a good one, a solid one, in Iowa. And they will listen to him on

that subject. Hopefully, in time, my credibility will be developed with them, but I don't have it right now, and I think that he can help us along as we approach that very, very important question, and hopefully can assist greatly.

Secondly, as we try to get ramped up and represent the individual defendants, Mr. Fern has an awful lot of information that you get when you come into a case early. It's hard to come in eight or ten months after the matter has -- after the incident has occurred. I would urge that the Court consider keeping Mr. Fern in place representing NECC.

And thanks for the opportunity to speak.

THE COURT: Thank you.

Does anyone on the telephone wish to be heard on this motion?

MR. MIKELS: Yes, Your Honor; Richard Mikels for Pharmacist Mutual.

THE COURT: Go ahead.

MR. MIKELS: First of all, if it becomes an issue that we're paying defense counsel, whether it's Mr. Fern or anybody else, then I will -- I haven't discussed this with my client but I think we can probably offer to be relieved of that obligation if it makes plaintiff more comfortable.

THE COURT: Thank you --

MR. MIKELS: However, assuming --

THE COURT: -- thank you for your input. Is there

something else?

MR. MIKELS: Yes, Your Honor.

We do support Mr. Fern and on the issue of the fee applications and whether they should be required, I don't think that is an issue in terms of whether he should be employed or not. But to the extent it becomes an issue, we'd like to be heard on it.

THE COURT: Well --

MR. MIKELS: So I just want to preserve my rights on that.

THE COURT: Mr. Sternklar, you phrased this somewhat in the alternative, and I don't recall whether the amended application takes a position. Does it take a position?

MR. STERNKLAR: The supplemental declaration says he's prepared to file fee apps if Your Honor orders it.

THE COURT: Okay.

MR. STERNKLAR: It's a really -- the problem is, Your Honor, if Your Honor's view is that it's not required, then we'd be imposing a substantial burden on Your Honor simply to agree to it. We're prepared to agree to it, but we don't want to be presumptuous and say well, we'll do it, and now you're got to deal with this problem.

It's -- so it's up to you. We'll do it either way.

THE COURT: All right. So, what is the United States Trustee's position on that? What is the benefit to the

estate of reviewing fee applications between the insurer and its counsel?

MS. BACHTELL: Paula Bachtell for the U.S. Trustee.

Your Honor, the UST would like the opportunity to review the time entries that would be provided by the applicant. I understand that the source of funds for payment is someone other than the estate, but reasonable fees are part of the expectation in the Bankruptcy Court. It's something that we're prepared to do; we're willing to do it. I can't speak for others' interest in participating in that exercise, but we would like to.

And my understanding of the situation in speaking to my colleagues and Mr. Sternklar prior to the hearing was that the parties were prepared to engage in that activity. So it was with that information that I explained to the Court that the UST has no objection to the retention, and was relying on the business judgment of the Chapter 11 trustee in moving forward with the amended application. And so I would ask that the Court allow a provision that requires the filing of fee applications and the UST is ready, willing, and able to review the fee apps when filed.

Thank you.

THE COURT: Thank you.

I see this in two -- I see two different goals to be served by these fee applications, one of which seems to me we

can do without, and the other one seems to be more important. The one that seems to me that we could do without is a determination of the reasonableness of the fee. That is between Harris Beach and the insurer, and to the extent that the insurer creates difficulties for Harris Beach, that Harris Beach thinks are inappropriate, then I suppose Harris Beach can always come to this Court and ask that its payments be made from the estate, reserving to the estate the right to seek reimbursement from the insurer.

So whether or not the fees are reasonable or not, seems to me in the first instance to be a matter between Harris Beach and the insurer. And it makes sense that both keep careful records with respect to their own position.

The other goal of the fee application, one that usually it's not focused on, is as a record of what Harris Beach is doing. And to the extent that Harris Beach is working for the estate, then it seems to me that a careful disclosure of what Harris Beach is accomplishing is a worthwhile endeavor, particularly when there's a question of it being paid by somebody else.

And so my inclination is to require Harris Beach to make disclosure of its time as would any professional rendering services to the estate, but not asking for a ruling on its fees unless it chooses to have the Court review the relationship between Harris Beach and the insurer.

How does that sit with you, Mr. Mikels?

MR. MIKELS: Your Honor, I'm concerned -- well, a few concerns. The first is that there's always a balance in terms of the risks of disclosure of fees because they give away issues of strategy. And this happens all the time in bankruptcy cases --

THE COURT: But you don't have to disclose the fees. You just have to disclose the --

MR. MIKELS: No, I was talking about what he's working on --

THE COURT: I know. But he doesn't work for you. He works for the --

MR. MIKELS: No, no, I understand --

THE COURT: He works for the Chapter 11 trustee.

MR. MIKELS: But we have a common interest in the defense of these actions because the claims against the estate that in the first instance, they'll be claims that we may have to indemnify the estate on, subject to whatever rights we have on coverage issues. So we have a commonality of interests in terms of how these claims that are being defended are resolved. And we are required, at least so long as we have the obligation to cover the defense costs -- which of course we're doing -- and so therefore we have a common interest with the estate in not disclosing and Mr. Fern not disclosing his strategy and so forth.

Now, as I said, this is always an issue in bankruptcy cases because I've made a career, as have many other people before you, and as you did before you were a judge, of making those kinds of disclosures. And we got sort of used to them. But the reason that we did is because it was a balance. On one hand, we had the risk of giving too much information to the adversary, and on the other hand, we had the overriding concern and the very important concern of making sure that bankruptcy estates weren't overpaying fees, and that made it worth, on balance, requiring the detailed disclosure.

In this case, that balance doesn't exist as long as we're paying the defense costs. And therefore I would say that the risk of giving information to adversaries would be prevailing because there's no countervailing balance, because we're not protecting the bankruptcy estate against fees. And in Your Honor's case, In re Plant about ten years ago, it's a Chapter 13, but you made it clear that what was overriding about fee applications and in that case, you, I believe, made a secured creditors counsel file fee applications because they were looking for reimbursement from the estate. And you were quite clear that if you're looking for reimbursement from an estate, there is an overriding concern that the fees be reasonable and the fee application should be filed.

That doesn't exist here; it's the mirror image of

that case. Until and unless he's ever looking for reimbursement for his fees from the estate, then that priority concern doesn't exist and the issue of disclosure of strategy and so forth, to me, becomes paramount because he's got a whole bunch of adversaries in litigation, all of whom will be reading the fee applications if, in fact, it's required.

So we would prefer that, since we have a commonality of interest with the estate in the defense, we would prefer that as long as we're paying the defense costs, that this kind of disclosure not be made to the adversaries because there's no advantage to doing it --

THE COURT: Who do you see as the adversaries?

MR. MIKELS: The people he's defending against: the claimants.

THE COURT: Okay. I understand.

Anyone else?

All right. Mr. Sternklar, would you send me an order which approves the Harris Beach employment, that requires Harris Beach to file quarterly disclosures of time in the case, in the type of detail that we expect in 2016-1 of the Local Rules, but that the disclosure is to be sent only to the United States Trustee, the Chapter 11 trustee, counsel to the Chapter 11 trustee, counsel to the unsecured creditors' committee, and counsel to the plaintiffs' steering committee, absent further court order; and also that the Court will not

rule on the reasonableness of the Harris Beach fees, absent a request for that ruling from either the insurer or from Harris Beach? Okay?

MR. STERNKLAR: Thank you, Your Honor.

MR. MURPHY: Your Honor?

THE COURT: Mr. Murphy?

MR. MURPHY: Yes. Your Honor, Harry Murphy for Barry and Lisa Cadden. Your Honor, with respect to the supplemental affidavit that Mr. Sternklar referenced --

THE COURT: Oh, yes, I'm sorry.

MR. MURPHY: -- you were going to get to that before you make a --

THE COURT: Right.

MR. MURPHY: -- ruling.

THE COURT: Thank you. I assume that Mr. Sternklar can get that to you in the next couple of days. If it says something that you think is disturbing, then please file a motion for reconsideration, within the fourteen-day reconsideration period. All right?

So the default will be, if you do nothing, then you're satisfied; if there's something about it you don't like, then you'll file such a motion and that'll be set for hearing.

MR. MURPHY: Your Honor, can you direct Mr. Sternklar when he'll serve that supplemental affidavit,

so --

THE COURT: Oh, he'll get that to you by Friday.

MR. MURPHY: By Friday next week?

THE COURT: By Friday this week or next week?

MR. MURPHY: This --

MR. STERNKLAR: If I can have a moment, Your Honor?

MR. MURPHY: Monday fine with us, Your Honor.

THE COURT: Monday's good. Okay?

MR. STERNKLAR: Thank you, Your Honor.

THE COURT: You needn't put that in the order; just send me the amended -- the revised order with the supplement; get that to Mr. Murphy and his colleagues representing the individual defendants; and if they're unhappy, I'm sure they'll tell me. All right?

MR. STERNKLAR: Thank you, Your Honor.

MR. MURPHY: Thank you, Your Honor.

THE COURT: Thank you.

MR. STERNKLAR: Two down. Your Honor, now, if we could turn our attention to the bar-date motion. This is a motion that in most cases is ministerial. Nothing seems to be ministerial in this case. The trustee requests the establishment of a bar date, for all the usual reasons: He needs a bar date so that he knows what the claims are; he needs a bar date so that he can prepare and file a disclosure statement, making adequate disclosure about what the claims

may be; he needs to know the claims so he can file a plan, which will be the vehicle through which he hopes those personal-injury claimants will actually get paid.

So, overlaid on that was the memorandum opinion by Judge Saylor on the transfer of motions -- excuse me -- transfer of civil actions, where he made it clear that the establishment of an early bar date might go a long way towards resolving the remaining issue that he left open in the case, which is whether and to what extent he should transfer cases in state courts where neither NECC nor any of its affiliates were named as parties, and that if those defendants, by the bar date, filed a claim for indemnification, contribution -- or any other claim, I suppose -- he left open the possibility he would transfer those matters to the MDL. As we've made clear in numerous filings, consolidation of these actions in the MDL is a core component of the trustee's strategy to reach a global settlement with all parties as soon as possible so we can get money to these people as soon as possible, at the lowest cost.

Your Honor, originally we filed the bar-date motion asking for a bar date, on September 20. We provided that we would give actual notice of the bar date to known and reasonably ascertainable creditors. We provided that we would publish notice in USA Today, the national edition. We also had a procedure in place to protect the confidentiality of

information, on those claims, about claimants' personal health matters. We also had -- and that, we believe, was sufficient to meet all our statutory obligations as well as our due-process obligations to these people, to provide both actual notice to known creditors and constructive notice to unknown creditors.

Going further, we had a procedure in the motion, where we asked Your Honor to enter an order directing the parties we call the notice intermediaries -- these are the clinics, the healthcare providers, who administered the NECC products to their customers and patients; we don't know who those people are, but we do want them to have notice of the bar date. And we arranged a procedure that we requested Your Honor approved whereby we would ask Your Honor to require that the notice intermediaries make an election: They can either send notice to everyone who received an NECC product within the two years prior to the filing, or they could turn over to us on a confidential basis the names and contact information of these people so that we could send those people notice as well.

Since we filed those pleadings, and in light of the numerous objections that have been filed, and in light of observations made at other hearings in this case, we filed in our response to the objections our proposed fix to the problems that seem to have arisen. That proposed fix extended

the bar date to October 8 -- October 15 from September 20th; it provided for publication not just in USA Today but in various local publications in the localities where these pain clinics and healthcare providers are located and where these products were administered. We also, with respect to the notice intermediaries, agreed that, and we proposed that, instead of being required to send notice to or give us the names of all patients who received any NECC product in the two years to the filing, that it be limited to those people reasonably expected to have suffered an injury, and those are the people identified as having received product in three lots identified by the Centers for Disease Control as having caused harm.

Certainly others who received other products are free to file a claim but, in terms of the obligation of the notice intermediaries, they either provide notice themselves or turn over the names. We've limited it to those people. Not only did that limitation, in our view, limit this process for the notice intermediaries and the burden on the notice intermediaries solely to those most likely to have suffered harm, but it also corresponded with the identities of the recipients of the recall notices that many, if not all, of these notice intermediaries previously were required to provide to these people by the federal government.

So this list should be readily ascertainable,

readily available. There shouldn't be much burden.

We also changed the form of the notice, to make it more consumer-friendly. We also limited who the information will be shared with. There's a concern, which I believe you'll hear from some of the people on the telephone about that this -- the identities of the potential creditors not be made available to some -- not be made available generally, be limited only to those who have a need for that information to provide notice to -- of the bar date, and to administer these cases. Obviously, all of these provisions would be subject to alteration upon motion to Your Honor and the entry of an additional order upon whatever grounds Your Honor decides to change the order, if such grounds exist.

We think that these changes have resolved most, but not all, of the objections by the notice intermediaries. And there are three classes of objections here: There are the notice-intermediary objections, which, in terms of number, are clearly the largest number of objections; there are issues the U.S. Trustee has raised, although they have not filed a formal objection; and last, there's the objection filed by the PSC, which is truly a horse of a different color and has its own unique issues, which I'll get to in a moment.

The remaining objections, Your Honor -- remaining issues, I think, in the notice-party objections, that are not resolved by the accommodations we're proposing to make, are, I

believe, the following: One, the notice intermediaries object to being forced to give notice without being reimbursed for their costs to do so. The trustee's view is that he's not requiring them to give that notice; it's an accommodation anticipating that many of them are going to feel uncomfortable having a third party give notice to their patients. They want to control that process; then they will have to bear the cost. If for any reason, including cost, they prefer not to give the notice, then they can simply give the information to the trustee.

You'll see from the objections, they're all over the map. Some of the notice parties object, on the grounds of patient privacy and HIPAA, that they can't give us that information and, therefore, they exclusively want to give the notice themselves. Others complain they shouldn't have to give the notice, that they want to give us the information. We simply will give them an election.

The HIPAA objection, Your Honor, we believe, is misplaced, for the reasons we said in our response. HIPAA clearly contemplates that disclosure can be made pursuant to a court order. There are different kinds of court orders. Most of the objections focus on what's called a qualified protective order, which is, under the statute -- under -- excuse me -- Federal Regulations, a specific protective order issued in litigation, in response to a subpoena. And then

there's a separate provision that says any order; you can -- if a court orders it, you can disclose it. We think the bar-date order is such an order. We think that, so long as the confidentiality restrictions we have in place are deemed sufficient, and we believe they are, the order provides all the authority that -- under HIPAA, that these notice intermediaries need to turn over this information.

If the notice intermediaries choose to give notice themselves, they will have to certify to the trustee that they've done so, but they will not have to disclose the names of the people to whom they sent the notice.

So with respect to the objection of cost, we think they have an election, and we think the trustee shouldn't be put in the position of having to monitor at that level the costs incurred and then reimburse people if they decline to turn the names over and instead prefer to send the notice themselves.

Second objection is largely by a contingent of notice intermediaries based in Maryland, that the bar date is too soon, that it should at least extend out till the expiration of all statutes of limitation under nonbankruptcy law, for the assertion of claims. And for obvious reasons, Your Honor, we can't keep this case open, nor should we be required to keep this case open, for years and delay payment to creditors concomitantly for an extended period of time to

address that issue. This is -- I'm unaware of any bankruptcy case that has ever kept a statute of limitations open till the expiration of the last possible statute of limitations.

The third issue that's been raised is that, well, why should the notice intermediaries give us the names; we can go to various state or federal governmental agencies and get the names. Well, the short answer is these people have it. These are the same names to the people -- the people that gave the notice -- the recall notices to. This should not be burdensome. This should not be difficult. The burden on the trustee of having to go through a state-by-state or federal process to try to get access to this information is potentially, at least, too severe to justify imposing that obligation on the trustee.

Finally, the -- I believe, the last remaining objection is to the absence of an affirmative exculpation in the order, for those who comply with the order. And I think it's self-evident: If you comply with the order, you're not going to have liability. So I don't know that we need anything further on that point, other than perhaps a sentence stating the obvious: If you comply with the order, you won't have liability. We've only asked people to make commercially reasonable efforts. Again, we're talking about mailing a short notice to people whose names and addresses should be readily available to them. But again, if they don't want to

do that, the order certainly authorizes them, under HIPAA and otherwise, to make that information available to the trustee.

Even if the order were characterized as an order that requires the notice intermediaries to give notice -- I don't believe it is; nevertheless, I believe that would be appropriate. Rule 2002(a)(7), on its face, authorizes the Court to direct who will give notice; it says the clerk, or some other party as the Court may direct, shall give notice. So 2002(a)(7) is a specific subsection that deals with notice of the bar date. Rule, I believe, 9007 gives the Court general authority to regulate the form and manner of notice.

So I don't think there is a serious argument that Your Honor lacks the authority to require it, if one characterizes that order as requiring it, which, again, the trustee believes it does not; it simply provides for an election.

The UST had three issues, Your Honor, they've raised with me informally; the first is -- and in no particular order, the first is that we put in the bar-date notice, consistently with Local Rule 3002-1, that 503(b)(9) claim -- 502(b)(9) claims, for administrative claims for goods and services -- goods rendered -- provided to the debtor within the twenty days prior to bankruptcy -- that date was set by Local Rule as sixty days after the first date set for the creditors' meeting, unless the Court orders otherwise. The

U.S. Trustee wants the Court to order otherwise and provide the general bar date for those claims.

I'm aware of Your Honor's unpublished opinion in JJ Donovan where I believe you interpreted that Rule and the interplay of that Rule on 9006(b)(6) as providing that the Court doesn't have the power to do that but does have the power to allow for untimely-filed claims of that nature, upon a showing of excusable neglect. Again, the trustee's preference is just simply to leave the Local Rule as it is, because that's out there. But at the end of the day, it's more important we get final resolution of the issue, than anything else.

THE COURT: I thought I heard you say this now two ways. What is the trustee's preference: that I extend it, or that I not extend it?

MR. STERNKLAR: I think the trustee's preference is you not extend it.

THE COURT: Okay.

MR. STERNKLAR: But I don't know that's -- how seriously -- strongly felt -- I mean, I guess --

THE COURT: Okay.

MR. STERNKLAR: -- it's easier that way. The Rule is what it is, and people know what it is and -- or if they don't, they should. We're not creating ambiguity or conflict, but the U.S. Trustee has asked for that, and I did say I'd

raise it with Your Honor.

The second issue the UST has raised is it wants some changes to -- which I believe are unobjectionable and modest, to the bar-date notice, to make clear that untimely-filed claims may nevertheless still be allowed under certain circumstances. And Ms. Bachtell's proposed some language and I'm confident we can work that out, and that will be unobjectionable.

The third issue is probably the most difficult; concerns the U.S. Trustee's concern that we are proposing that the proofs of claim and the addenda remain confidential. The U.S. Trustee recognizes that the agenda should remain confidential, but it's concerned, in its view, this is a -- in his view, this is a public process and that the actual proofs of claim should be made available.

We've explained that our concerns with that issue are that people shouldn't put medical information on the face of the claims, but they might. And we're expecting tens of thousands of claims. It is not a simple exercise to review them for redaction. And there's also a concern that the identities of these claimants not be widely distributed.

So what we are prepared to do, and I believe the U.S. Trustee is agreeable to this, is ask our notice agent to prepare a spreadsheet or list that simply has initials or some moniker that says this is a claim, this is the amount, this is

the nature of the claim -- it's a tort claim or some other claim -- and this is the priority -- general unsecured or something else -- and that that list be made available to the public.

The trustee's concern was that that list contained enough information so someone can identify claims they might need more information on; and I think identifying them as tort claims or some other claim provides that, in this case, information. And we'd be prepared to amend the order to provide for that.

Finally, we get, Your Honor, to the PSC objection, which is truly wide-ranging. At its core, regardless of what was intended, what that objection would result in is the wholesale supplanting of the trustee by the PSC. Despite what the PSC argues, this is not a class action; this is not -- if it were, we wouldn't need Rule 7023 to deal with class certifications in adversary proceedings. These are -- this is a process governed by very specific statutes and rules and case law that, while it certainly has some superficial similarities to a class action, is not the same thing as a class action. And they don't always serve the same purposes.

So the PSC's approach that this is just another big class action and should do what we do on all the other big class actions is: (a) wrong; (b) reveals a fundamental misunderstanding of how this process works and what its role

is in this process, compared to the role of the trustee; and three, would result in the PSC getting to make decisions and having discretion that, I submit, the Code and the law imposes on the trustee to make.

PSC wants two bar dates, not one: It wants a bar date for personal-injury claimants and a bar date for someone else. They don't say when the bar date should be for the personal-injury claimants, but the implication is it should be way, way out in the future. They want -- and that seems to be a concern for unknown and future claims.

This is an issue that the Code addresses. As Your Honor noted earlier, the definition of claims is broad. We understand, as part of a plan, we're going to have to address in some fashion how we propose to treat claims for which symptoms may not have arisen yet, if any, or in other ways that haven't manifested themselves. But that's not a bar-date issue; that's a plan issue.

We're going to have to set a bar date at some point, no matter what. We believe the notice regime we get will identify those claims. But it proves too much to say, 'People who don't know they have a claim need to get notice of a bar date for a claim they don't know they have, even if they get the notice.' They don't know it, they don't know it.

So to extend out the bar date some indefinite long period of time to see how many more claims get manifested,

whether they get manifested, truly injures those seriously injured who have suffered claims, who'll have to wait to get their money for these somewhat speculative contingent potential claims to emerge in the future. That's not to say they're not creditors. That's not to say we don't have to deal with it. But it's not a bar-date issue. We have to set a bar date.

Moreover, this bar date is almost a year after NECC terminated its operations. Everybody -- as one of the objecting parties, the Dr. O'Connell Pain clinic objection at docket number 356 avers everybody who got product from the three lots knows it, and everyone -- it's inconceivable that there's anybody out there, given the wide publicity -- nationally, regionally, in the health industry -- this debtor has received, that there is a larger substantial -- perhaps any creditors who received any product, who either won't get actual notice of this or won't be covered by the publication notice. It's hard to imagine there's anyone who doesn't know that they haven't been affected but, for that reason, Your Honor, we can't have an extended open-ended bar date; that's an argument for no bar date at all.

The PSC doesn't like the trustee's notice agent, Donlin Recano; it wants to hire its own notice agent. Now, originally it said it wanted to hire its own notice agent to handle different issues in the MDL, notably, gathering medical

records and things that are peculiar to the MDL. Now they want a wholesale change; they want us to get rid of Donlin. They cast aspersions on Donlin Recano's credibility because the debtor originally selected Donlin Recano.

Your Honor, we have no particular loyalty or -- to anyone. Donlin Recano's a nationally recognized, known noticing agent. The delay in this process and the -- and potentially the money, to simply switch forces now is -- in the trustee's judgment, makes that an unwise thing to do. And the PSC's arguments to the contrary -- well, I understand the PSC has a different view, but it's not the trustee.

The PSC complains that the notice does not specifically describe the potential effects in a plan of third-party releases. As we said, it is our expectation at some point we will have a global settlement, a component of which will be third-party releases that will inure to the benefit of those who make a substantial monetary contribution to the pot.

Your Honor, we don't have that plan, and this is not a disclosure statement. And in light of, indeed, opinions such as Your Honor's opinion in Clamp-All, I'm not sure how much we can or even should say about third-party releases in a bar-date notice. That's the kind of thing that, in order to be explained fully and thoroughly, needs to be included in a court-approved disclosure statement, and we're not at that

point yet.

So the fact that the notice -- the notice does say that creditors should be aware that if they don't file a claim they will not have claims against NECC, but whether they file a claim or not, it's possible the plan may prevent them from going after other third parties. I think that's as far as we're allowed to go, frankly, absent plan and a disclosure statement in describing what the consequences may be, because anything more we say starts opening up a door to a much larger disclosure, and we start resembling what would be in a disclosure statement, and I submit that's inappropriate for a bar-date notice.

The PSC complains that our direct notice is inadequate. They don't want to limit the obligations of the notice intermediaries to -- or the trustee to send direct notice only to those who received contaminated products from the three lots. They say we should defer to the PSC who, in the MDL, sent out some eighty-odd subpoenas where they want to gather the names of a broader -- much broader group of people from the notice intermediaries of former NECC customers. We should wait until that process plays out. We should then give direct notice to every one of those people.

The short answer is we think that is unduly lengthy, open-ended, costly, and we believe that our approach is superior and is more likely to get resolution of this case and

the names of these affected people who have the real claims quicker with less acrimony, with less fighting, with less litigation. But again, it's the trustee's role to make that decision, not the PSC's role to make that decision.

Its related complaint that our process interferes with the MDL discovery gets it backwards. We're indifferent to that discovery. They can do what they want in the MDL, but that's got nothing to do with what we do here in terms of identifying claimants for notice. And indeed, Judge Saylor has requested additional briefing on whether he even has the power under the Federal Rules of Civil Procedure that limit discovery to information recently calculated to lead to discovery of admissible evidence in the litigation, to use that process to get names and contact information to be used in the bankruptcy process to give notice. I'm not sure he has that power. But that he even asked the question shows why it's the trustee's duty, indeed, and power and obligation to move forward in this court without being limited by what the PSC is doing in the MDL.

Your Honor, so I believe what we've done is constitutional. I believe it provides due process. I think we've done more. The trustee nevertheless is prepared to do even more, if there's something that makes sense to do. The PSC has supplied the affidavit of Kinsella (ph.), someone who proposes to be an expert on noticing matters. And Kinsella

proposes a different noticing process. And what's interesting to note is Kinsella also explains that its background is in various cases.

Well, if you look at the list of bankruptcy cases that it's involved in, those are megacases. Those cases have a lot more cash available to -- and have a much broader constituency range of potential creditors than NECC has. If we had an unlimited pot and we had unlimited time, maybe we'd do something different, but we don't, nor do we know what this would cost, whether it would cost more or less than the small amount of money we even have on hand to do what Kinsella wants.

We don't think that what -- you know, what Kinsella proposes is not inherently good or bad, but under these circumstances, it's the trustee's judgment that it is inappropriate, that we don't have the money or the time to engage in the kind of class action based solicitation of claims that the PSC proposes will occur under the Kinsella proposal.

Finally, Your Honor, the PSC, perhaps in an overexuberant advocacy, alleges that by setting a bar date we're seeking to bar claims. We're not seeking to bar any claims; we're seeking just simply to do what Rule 3003(c)(3) says we're supposed to do which ask the court to set a deadline for claims. It's the trustee's view that it needs

that deadline.

The PSC complains we haven't disclosed to them the status of the trustee's negotiations with the insiders over a settlement and the time frame in which we think that's going to be completed. We have certain confidentially obligations, but those negotiations are moving forward. They're moving forward aggressively. The trustee is trying to bring them to closure as soon as possible. That we haven't disclosed the particulars of that to the PSC reveals more about what the PSC perceives its role to be compared to what the code says the trustee's role is. They've gotten all the information on that they're entitled to, and that we haven't said more isn't the reason not to set a bar date.

So, Your Honor, I suppose I'm prepared to answer any questions you may have, and after you hear from these people, perhaps I can have a very brief opportunity to give a final summation, if that becomes necessary. But we need a bar date. We think the bar-date procedures we've proposed are both constitutional and reasonable. We believe that we've resolved the bulk of the objections by the notice intermediaries. We believe the PSC's objection is not well taken and should be denied. And we would ask Your Honor to allow the motion. Thank you.

THE COURT: All right. We'll take a fifteen-minute recess to give Ms. Chambers there a break. All right.

(Off the record at 2:39 p.m.)

(On the record at 3:03 p.m.)

THE CLERK: All rise. Please be seated. The court is now in session.

THE COURT: All right, so I have the Chapter 11 trustee's position with respect to the motion for the bar date. Does the creditors' committee wish to be heard?

MR. BALDIGA: Thank you, Your Honor. Mr. Sobol himself has a real time constraint and asked whether --

THE COURT: Wow.

MR. BALDIGA: -- he could --

THE COURT: Okay.

MR. BALDIGA: -- possibly go next, if the Court would permit?

THE COURT: Absolutely.

Mr. Sobol, go ahead.

MR. SOBOL: Thank you very much, Your Honor.

THE COURT: I thought you were on the phone, or going to be on the phone.

MR. SOBOL: That must have been --

THE COURT: No?

MR. SOBOL: -- a miscommunication --

THE COURT: Okay.

MR. SOBOL: -- in my office, for which I'll take the responsibility. And it won't happen again. I apologize for

that hassle, really.

So, cutting through the histrionics, I want to go to three very substantive issues; the first is the issue of notice to the injured victims, okay? I think that there's a shared desire to get as much notice out as we possibly can to the victims. The PSC thinks the following is a very straightforward necessary proposition in this case: that those people who received contaminated products from NECC receive direct written notice by a professional notice administrator and claims expert; we think that's a very straightforward thing. And our position in the papers, and I'll get into it --

THE COURT: Before --

MR. SOBOL: Yes.

THE COURT: Before I -- let me just interrupt you for a moment. Because this Court is going to rule on -- and pre-approve what the notice says, why can't any notice provider send out these notices?

MR. SOBOL: Any notice provider can. That's --

THE COURT: Okay.

MR. SOBOL: -- not our issue.

THE COURT: Oh, I thought you were --

MR. SOBOL: Yeah.

THE COURT: -- saying that it needs to be a notice provider who is familiar with these kinds of issues.

MR. SOBOL: Oh, no, no, no. I guess the distinction I'm drawing is whether it's Donlin or Kinsella or some company like that --

THE COURT: Right.

MR. SOBOL: -- versus clinics doing it.

THE COURT: I see.

MR. SOBOL: So that's one of our issues. So just let me drive right into that right now.

So we think that it should not be sent out by the clinics; it just should be sent out by a professional, whether Donlin or Kinsella, whoever, because you can track who it is that they're getting it. If you get a return letter, you could have somebody do something to be able to figure out where they live; we're going to get this back out to them. You have a record as to who it is you're sending out information to, so that if you don't get a claim and there's an application by the PSC or the creditors' committee that there be supplemental notice to those people, you know who they are. Right? It's all a very, very routine kind of thing. And there are reasons, as we've explained in our submissions, why it is that the clinics would be less prone and in a conflict position to do that, particularly if the notice is making clear to those people that they might have a claim against the clinic. So rather than having the clinic send it out, our position is very, very straightforwardly that

it should be by a claims expert.

And so whether or not the names are coming from an order that you enter or an order that Judge Saylor enters, and I'll deal with that just briefly in a few moments, is really not material to our ultimate real core desire, which is, these people need to get notice, that you have approved, from a professional claims expert, so that we can track professionally who's getting the notice, whether they need supplements, whether we can find them, are we going to actually create -- one of the things the PSC might do, on our nickel, is a phone bank so that we can follow up if people haven't filed a claim or, if their claim information is insufficient, to tell people that. Right? It's all very simple. That's the core part of our -- and we remain at a difference of opinion with the trustee as to how to do that. That's one substantive position.

A footnote to that, just to clarify something that may not be clear in either the presentation of the lawyers or in the materials so far, before I get to my second point, this footnote is that, just so you can understand, months ago, the PSC, through me, sat down with the trustee's office and we looked at this issue of notice and how we're going to do this. And frankly, I thought that what we had made arrangements for was that the PSC would take on the job, because we're going to be conducting discovery anyway, of the clinics, to also be

seeking the names, for multiple purposes; right? Remember that one of the issues in this case is that NECC and the clinics should have had these people's names to begin with, not names like Mickey Mouse or Donald Duck or whoever it is they were writing who are falsified names or backdating names or not having sufficient names. They should have been keeping these names all along; it's one of the things the PSC wants to find out about: who actually has the list around. But we sat down, me and the trustee sat down, and decided that that would be an effective way -- the most effective way, through Rule 45 and through Judge Saylor, for that process to do that, because it would be central enforcement and it would be one consolidated pursuit.

Now, I was surprised to find out, when the bar-date motion was filed, that the trustee wants to do his own thing too; right? At some level I don't care about it, so long as the victims don't pay for it; right? But it does, frankly, seem that there's a little bit of now -- there's one effort by the trustee to get names, and there was an effort by us, in the Rule 45 context, in front of Judge Saylor, to get the names, and it seems to me that that's frankly a little silly and should be worked out.

But I'm going to move on to the second issue anyway, okay? The second issue is, what is it that the notice should say about this notion that there may be what are functionally

nondebtor releases; they're really channeling injunctions but which effectively cut off the rights of these victims -- not against NECC but the debtor, because that's going to happen no matter what -- but against, like, if they're real life, like the clinic, with their doctor, with a testing company, with a company that's supposed to make the clean room or the company that was supposed to be cleaning the clean room, right?, all these other people. What is it that's planned now, if anything?

Now, on the one hand, we're agnostic to what the decision is, but I think it's important to make an observation about what the decision is. If today the bar-date notice is not intended to provide constitutional do-not notice to these people, in a real way this is a real problem. This is, in a real way, if you don't file a claim in this bankruptcy now, your rights against your clinic may be out; we don't know, because there isn't a deal to get together, but it may be out the door, or against your position, or against the test company's blah, blah, blah, blah, blah. Right?

If it's intended to do that, then it needs to say, like, right out of the gate, in very clear language, and we don't think that it does. We were provided something that we think does it in somewhat the best way you sort of can do it now, and the reason I say it that way is because there are no deals yet, so you don't even know defendants you're talking

about, whose claims might be waived right now, functionally. But we've done the best we can, in our proposed notice.

Now, on the other hand, I've heard this said by the trustee and I can completely understand it, and I've heard it today too: 'No, no, no, no, we're not trying to deal with a plan today. We're only dealing with the bar date. And if we have a plan -- and we plan on having a plan that has nondebtor releases, channeling injunctions against as many people as we possibly can, including the insiders, and we're going to do that later on; and at that point we're going to need full disclosure in the context of a plan.' Well, then my question is, well, okay, but then you're going to have to send notice to everybody, right?, not just those people who filed a claim, because now you're barring those people's -- everybody's rights against these new nondebtors that weren't disclosed previously.

So we're not just talking about the population of claimants in a vote on a confirmation plan; you're going to need to send out notice to everybody before you have a channeling injunction that says, 'Too bad, your rights against your clinic are now gone,' which, okay, again, from our point of view, sort of agnostic. If -- in fact, we encourage having a nondebtor release program here; we think it will maximize the value to the estate, to be sure, and we're doing all sorts of things to do that. But if we're going to do that later on,

and if we're going to have all that disclosure later on and we're going to have lots of expense later on, then it really does ask the question: Why don't we wait to do that notice for NECC's bar date for the victims, then, too, rather than having to do another round of notice in a situation where we're trying to conserve valuable resources?

Now, if I understand the logic, then, it's, well, wait a second, we've got to be doing something now. And I understand that. Our position on the PSC's position is you should enter a bar date for nonvictim claims and that our position is that with respect to this -- again, this is the way this logic goes -- if we're going to be doing a big notice program later on with a nondebtor release program, and then the question is why not wait, and you can do your bar date now for nonvictims. And then it raises the question, well, do we need any information today or in October about the victim claims, in order to do these negotiations or do something else? And near as we can tell, frankly, the answer's no.

In other words, it's not critical path to getting this case done, from our point of view, from what we can see, to have a bar date now for victims if we're going to go through that notice program again later anyway. It's not critical path, because we need to put together the deals, because we're going to have to put together a plan, I mean, because we're going to have to go through a notice process

anyway, and none of that requires knowing anything about the victims now.

Now, why do we keep on saying that? Well, because NECC is insolvent; because there are 700 and more illnesses that have been documented, and 61 deaths and exposures that are out there; and the value of the insurance, by any participant that we've spoken to so far, recognizes accumulatively it's not going to come close to compensating everybody.

So at one level, it's immaterial whether or not one person's claim is big or another person's claim is small, or whether you have forty-five of the sixty-one deaths in the case right now, or only twenty-five of the sixty-one deaths, because you're going to do a notice program later on when you're confirming the plan, to bring those people in, if that's what you're planning on doing later on.

So just again, to make the second point clear, we are not philosophically, in terms of this issue of nondebtor releases, against the notion of doing a notice now that adequately protects people's rights, although I'm not sure we can really get enough done there on it, simply because what you do -- again, what we're doing is so oblique, frankly; your rights may be lost against anybody under any circumstances involving anything, right?, that we end up going down that way. So be it, and hopefully that'll be enough. But on the

other hand, if, as the trustee expects, we're going to have to do full-blown notice later on, we don't see a purpose, in terms of critical path, for having to do a bar-date notice now for victims.

The third point I wanted to address, and this is frankly one of the smaller ones but it seems to have raised the ire of the trustee a little bit, is that anticipating these issues about the importance of notice and the acquisition of names and how we're going to deal with all of this stuff, both the plaintiffs' steering committee and the creditors' committee began a process sometime -- I think it was in mid-May or something like that -- to do a competitive bidding process to find out who was going to be the best and the cheapest at a variety of things, which includes being the black box -- the lockbox, if you will -- that gets these names, de-duplicates the names, sends out the notice, sends out following notices to track people down, deals with census information later on, houses medical information for purposes of allocation, et cetera, et cetera, et cetera. And we invited the Donlin firm to participate; the Donlin firm refused to participate. The creditors' committee and the PSC made a joint recommendation to the trustee to use Kinsella, whose bid was markedly less than the professional services being -- of Donlin. And for reasons that, frankly -- actually, for reasons that escape me because the reason I've

only been given is timing, the trustee chose to reject that.

Now, the timing issue I don't think is -- should -- is or should be a problem because, again, the notice hasn't been approved yet, let alone sent out, let alone names coming back and back-identifying. It is the case that the subpoenas that we've issued to eighty-two recipients, seventy-some-odd of which are the clinics, does indicate to people that they are to return information to the Kinsella firm.

The final thing I should indicate is that there is some question as to not the intent but the follow-through by the clinics when responding to the CDC's request to give a notice of the -- what's been called here as the recall notice. It's not clear the extent to which the clinics were successful in an effort of sending recall notices to everybody. There's no declaration before you right now, either by the trustee or by me, in terms of the adequacy or inadequacy of that process.

I will represent to you, however, within my discussions with various people, and this is at best hearsay from other lawyers telling me what it is that they were told by other people in various states, is that it's mixed results and in some places that the return of the letters was almost a third, as the address -- unknown or something to that effect; that in some other places, it wasn't letters that went out to people; there were phone calls that were made to people, and in some places the population of to whom it is that was to be

contacted has been reported back to me in varying ways; in some places it's anybody who got a contaminated product between March and October of 2012, and in other situations it's anybody who the clinic has reason to think was injured by the MPA. It's because of issues like that that we thought it important to have a court order under which each clinic has been served formal court process to which to respond and to be obligated in terms of providing information.

The final thing I just want to throw out is that it's been observed that there is obviously an overlap in terms of the tort issues that Judge Saylor has been dealing with and the bankruptcy issues that you've been dealing with. And one of the things that's clear overlap is this bar-date issue, as it certainly affects the material rights of tort claimants under bankruptcy laws. And at least I'll say that I have suggested, whether this is crazy or not, but at some proceeding when we're dealing with these issues, that the courts -- plural -- might consider holding a joint session where we're dealing with these issues, because it might be -- frankly, it might be more fun -- I can put it that way -- but maybe also more efficient, because of the need to toggle back and forth.

If Your Honor -- I have never done this in my thirty years of practicing law, but I have kept some people waiting for me for a couple of hours. If the Court has any questions

for me, I'm happy to answer them; otherwise --

THE COURT: No, I don't.

MR. SOBOL: Okay.

THE COURT: I don't. Thank you.

MR. SOBOL: Thank you very much, Your Honor.

THE COURT: Thank you.

Is there someone else on the phone, who's going to be representing the PSC committee?

MR. SOBOL: There was a Mr. Lipton, I think, or Mr. Sobor (ph.).

MR. LIPTON: Yes, Your Honor, this is Marc Lipton; I'm on the phone still.

THE COURT: Okay, good. All right.

Safe travel, sir.

All right, does anyone else -- I'm sorry, Mr. Baldiga, you wanted to be heard.

This is Mr. Baldiga on behalf of the official creditors' committee of the bankruptcy case.

MR. BALDIGA: Thank you, Your Honor. For the record, William Baldiga, Brown Rudnick, for the creditors' committee.

Your Honor, we support this motion. And like everything else we do, the context is important. We are seven months into this case, as quickly as that has gone by in some respects. And it's an important case in the sense that you

heard from Mr. Galligan earlier: There's real suffering here. And this is not a class action where I might get a fifty-dollar check next year or the year after, for participation in whatever happened. But the recompense here is critical to the ongoing care of some very, very sick people. And we're also dealing -- so time is critical. And in some ways I'm embarrassed that we're seven months into the case, just asking for a bar date.

This process -- and we're here today after what has been a full two-, almost three-, month process of discussions, almost daily, among the trustee, the PSC and the committee. It's fair to say that the committee wanted in March to file the motion that you have before you; we held off because the trustee, to his credit, asked that the committee expend every conceivable effort in bringing the PSC on board, and the trustee joined us in trying to do that, and we spent ten weeks trying to do that; we were successful in certain respects. A lot of what you've read is the product of a lot of very good cooperation, but we were unable to get that on board.

We did reach an agreement on June 6 with the PSC that they would fully support a motion brought before this Court for a bar date of around October 15, and that would apply to all claims. That's an agreement that we did reach in writing. And it gives us pause that something different than that is suggested.

We -- there is very good reason for a bar date here, and two primary ones. First, it drives the settlement process. We at Brown Rudnick have been here before, as perhaps other parties; certainly Harris Beach, who you heard from previously, in other cases, including the ephedra cases. It is really very difficult to expect potential defendants, potentially culpable parties, and especially the insurers, to cut significant checks without knowing the universe of claims in front of them, as the Bankruptcy Code requires or the Rules require, under oath, certified, with some real level of detail. We all know, from 60 Minutes and news reports and everything, what happened here, reports of deaths and so forth. But people don't write big checks unless they have the details in front of them; that's only responsible. Everyone who writes checks reports to someone else who would expect that.

Second, and this is critical, and in the context of the -- what you heard Mr. Sobol say, we are here in the context of a dual proceeding, the MDL. And it's impossible to fully appreciate the importance of the bar date now and the immediacy of it, without appreciating what has happened in the MDL.

The -- there was a motion by the trustee, in May, to centralize all pending actions relating to NECC, including those that did not name NECC specifically, for strategic

reasons perhaps, in the MDL, for efficiency and, incredibly important, to avoid the multiplicity of indemnification claims arising in cases such as the ephedra cases; those are the claims that could really break the back of any case. And every time there's an expenditure by one of the clinics and so forth, there's a potential indemnity claim; those are contractual here. There're some common-law indemnities but, for the most part, as you heard from the trustee very early in the case, most or all of these clinics and hospitals, and so forth, have contractual indemnities from NECC as part of their normal purchase of product.

The PSC has issued eighty-two subpoenas to clinics about a month ago. There have been more than thirty, perhaps forty, objections in the MDL. Every piece of paper has a cost. The cost of that process is considerable; we hope not overwhelming. We believe that, as of this date, there has been nothing yet produced by way of the names and addresses that Mr. Sobol referenced. We would like that not to be the case, we would like that to have all come in easy with no objection, but nothing is easy.

In the ideal world, we would have those lists and this would be that easy, but there are legitimate objections, including by many people on the phone, and those have to be played out. You heard Mr. Sternklar say earlier Judge Saylor, even after receipt of those and a full hearing, has asked for

supplemental briefing; there's further hearings. We're not going to get what we need there. Hopefully we'll get some of the eighty-two. But waiting till the last person complies with something that is subject to that much legal give-and-take is a very, very long process.

Judge Saylor expressed concern as to the centralization with respect to certain claims, those that didn't name NECC in his ruling, in his written decision -- and the Court may have seen it; I hope you have; if not, we can certainly put it on the docket on this proceeding.

THE COURT: I've read it.

MR. BALDIGA: -- is that concerned with comity and other important considerations that did not transfer into the MDL cases that did not name NECC or one of its affiliates, and understanding explicitly that that could allow -- he wouldn't be able to stay those and so there could be -- it could drive indemnity costs significantly. And Judge Saylor suggested to the trustee, and the trustee heard him loud and clear and announced to the committee and to the PSC, coming out of that hearing -- or after reading that decision, 'We need a bar date and we can't wait any longer for you, OCC, to try to get the PSC fully on board.' And the reason is, because with a bar date, if one of these clinics or others with indemnification rights file a proof of claim, it's no longer a theoretical claim but something that could justify Judge Saylor exercising

his jurisdiction.

So a bar date will drive the settlement process that we're all here -- we don't need to be in Chapter 11 if we're not going to have the settlement process; Chapter 7 would suffice. And the bar date is a necessary tool to the success of this case where time is important. Secondly, it will reduce claims substantially, and that's critical. This is a very limited-universe case.

The PSC has argued a few things -- I think Mr. Sobol narrowed them significantly in his comments, which is appreciated -- and has argued last week -- came close to arguing again today, but clearly in last week's transcript said that 'We are here with a de facto class action.' And Judge Saylor corrected them and said, 'No, that is a horse of a different color. This is not a class action.' And the argument persisted that there was a case that Mr. Sobol's firm was involved in, the Relafen case -- I don't -- I'm phonetically taking it from the transcript -- in which there were 4,000 timely claims filed; there was then -- authorized some further outreach. An additional 350,000, or so, claims came in deserving payment, and that's when Judge Saylor said, 'Well, this is a much different case.'

Mr. Sobol's first point was -- and this is really the primary driver; he said, 'I think we can all agree that we should do as much notice as possible.' We don't think that's

what the standard is. This case -- as much notice as possible would cost more cash than this estate has. We don't have the funds. We don't have Merck on the other side here. We can't afford to do as much notice as possible. It's a balancing act. I think the trustee has done a great job balancing competing demands between economy of the estate and that type of theoretical class-action type of ideal where funds are unlimited.

And Mr. Sobol's specific point is, 'We suggest that everyone who got a contaminated product should get a direct mail notice.' That's the specific. Well, what does that mean, getting down to brass tacks? First, none of us really know how many contaminated products there were. We believe, and the CDC has said, there were three contaminated vials of MPA; maybe 14,000 people got that -- got a shot from one of those. And so we're looking at, we think, a universe from people who may have taken an injection from a contaminated vial, up to 14,000 or so; could be much less than that, but that's the -- would seem to be. But that's one drug.

If you look at Exhibit 5 to the PSC's objection here, they're pretty explicit about what they just asked the Court to do, because we talked about 14,000 people getting direct mail notice, but they want direct mail notice to all people who may have gotten a contaminated drug. At Exhibit 5, the PSC is pretty explicit; there were 1,900 different types

of drugs that may or may not have been contaminated, at 457 facilities, in virtually every state in the country. If there were 14,000 who got MPA, how many people got the other 1,900 drugs? Are we talking about a million notices? Three million pieces of mail?

It's -- it would be nice to be able to be in the abstract where there is a large party at the other end who could permit us to give every conceivable notice, but we can't, so we do have to deal in the practical realities. The trustee has been -- "patient" is a good word -- to take our comments, take the PSC's comments, in more hours of meetings and calls and drafts. What you have before you is probably the twenty-fifth, or so, draft of a bar-date notice; it's not been for lack of trying to come to a consensus.

I do want to comment on the DRC part of this. Well, Mr. Sobol is correct; we did join with the PSC in a competitive process to see whether DRC or someone else would reduce their cost, and it does seem like we can get there. And -- but we would do it at the official committee with the trustee and not over the back of the trustee.

There's time to do that. All this Court would be asked to do today is approve DRC as the mail drop for these notices. There is plenty of time ahead of us, in a couple months, three months ahead, to change horses in that regard. There's a lot of work to do with these claims; a lot of it

will be done by the trustee; a lot of it will be done by the committee, in terms of analyzing them, trying to figure out settlement. The plan has been already in the works, but there'll be plan balloting and so forth. Maybe that won't be DRC that does that work, and -- but we know how to bring a motion to the Court on due notice and do that, and we'll give DRC a further opportunity to be competitive in that regard. But this bar-date notice does lock in DRC.

I do want to mention -- so we're fully supportive of what the trustee has done here; it may not be perfect; it does use the estate wisely. We -- it encourages the filing of a claim by those who have claims. It does not do what the further Kinsella drafted notice would do, which is actually encourage the filing of a claim by someone who has non-personal-injury claims but who may have suffered distress. We think, while there are some class actions where that is appropriate, it invites what the PSC may term millions of, literally, claims by people who may or may not have been exposed to a drug, possibly, and may have had legitimate fear that it just doesn't know whether it ever got an injection or was exposed to something that may or may not have been contaminated or caused any harm whatsoever. But we don't think it's our job, at the estate level, to encourage everyone who has any conception in that regard, to file a claim and see what happens; that would make this case come to a crawl, and

those people who have had such tremendous suffering will be waiting years for any type of recompense.

There is one point that Mr. Sternklar and I were talking just a moment ago that we may have to come back to the Court on, which is the amended order suggested by the trustee with respect to -- on his supplemental response, or whatever it is, provides, at the request of some of the people on the phone, some of the clinics, that the members of the creditors' committee, acting in their fiduciary capacity, do not get to see the information that comes in on the bar date; that's a legitimate concern today. Part of the dynamic here is that there is a real concern, and you see it in Judge Saylor's transcript, of client-trolling and, for these addresses to be made public, give rise to a real concern that there are lawyers out there who may want to take a huge mailing list and do the type of solicitation which none of us would be proud of.

And so we have committed to the trustee that, because there are lawyers who represent clients on our committee of course, just like on the PSC, that we would have it be at attorneys' eyes -- that is, Brown Rudnick eyes -- only, until the bar date comes and goes, but that once the information comes in, it's critical that the members of the creditors' committee, who are very experienced lawyers in the ephedra cases and in other cases like this, get to see the

substantive information, as will then all the people on the defendants' side and so forth, if that's what we need to do to make a settlement.

So we -- that one part of the order we do take issue with; it's a very minor part in the universe of things here. And hopefully with the clarification that the members won't see that information till the bar date has come and gone, assuming we're dealing with October 15th -- that's a reasonable period -- we are not going to do client-trolling on our committee. And that concern is completely alleviated once the bar date has come and gone. Thank you.

THE COURT: Thank you.

MR. BALDIGA: Any questions for the committee, Your Honor?

THE COURT: No.

MR. BALDIGA: Thank you.

THE COURT: United States Trustee?

MS. BACHTELL: Thank you, Your Honor. Paula Bachtell for the U.S. Trustee. Good afternoon.

Your Honor, the U.S. Trustee understands and appreciates the Chapter 11 trustee's efforts to obtain a firm bar date to give clarity and to provide proper notice, but we have requested amendments to the proposed order that was submitted to the Court under document number 372; I'd like to address them in reverse order as presented by Attorney

Sternklar. First, Your Honor, with respect to paragraph 6, the UST has requested a more narrowly tailored relief with respect to information that is treated as confidential in order to address the rebuttable presumption that the public has a right to access to proofs of claims filed by creditors concerning their own claims; these are documents filed with the Court and, therefore, they are judicial records.

Your Honor, it's extraordinary to the U.S. Trustee for anyone to request that the face of the proof of claim not be made part of the public record. I will say to you that we are in agreement that with respect to the addendum which is separately referenced in paragraph 6 and which I understand will include the very personal information about the claimants' medical situation, the UST does understand that that information, the addendum alone, is properly kept confidential.

But with respect to the face of the proof of claim, we have requested that that POC itself be made available to the public. The reason for that, Your Honor, is it's our view that it allows for an opportunity for a party-in-interest to request further information from the Court, for cause; it'll assist in the objection to claim process and voting calculations; but most importantly, Your Honor, it'll provide the public with a more complete understanding of the judicial system and a better perception of its fairness.

We did also discuss the issue of a list. Your Honor, our first request would be that the POCs themselves be made part of the public records, which is consistent with any other case that we've ever been involved with, but that if the Court is inclined to consider the substitute option of a list, I would submit that the UST will actively negotiate and participate in what information would be provided on the list. And it would be our request that essentially the same information that you would see on a proof of claim itself be made part of the public record in that alternative manner. But I just would like to make clear to Your Honor that our first request is that the face of the POC be made public, consistent with other bankruptcy cases. Your Honor, that's paragraph 6.

The next issue: related paragraph 20, which just dealt with the barring of claims; and the specific language in that particular area raised a concern about late-filed claims. And so the UST has suggested language for the trustee to consider that would insert the word "a timely claim" in paragraph 20 and also make reference to the debtor and its estate being forever discharged if the claim is not paid in Chapter 11, so that untimely proofs of claim, in the event that there are funds available after the payment of timely filed proofs of claim, would be available to those claimants.

And then last but not least, Your Honor, the UST did

raise a concern regarding paragraph 11(f) and the "provided, however" language. I understand from Attorney Sternklar that he was taking that language from -- and the particular date reference therein is tied to the language in our Local Rule 3002.1, which begins with, "Unless otherwise ordered by the court". I will say, Your Honor, that the UST has requested that there be a general bar date for all creditors. In our view, it was either important not to add superfluous information into the context of a notice for bar date, or it was just more fair and easy to have a general bar date for all creditors, which is what we're accustomed to seeing.

If the Court is predisposed to not diverging from the Local Rule, which Attorney Sternklar did share with me that you had made that ruling in an unpublished decision -- I was unaware of it -- I have to defer to the Court on your feelings on that matter. But the request --

THE COURT: I --

MS. BACHTELL: -- has been made.

THE COURT: I certainly understand all the arguments that have been made about --

MS. BACHTELL: Um-hum.

THE COURT: -- about victims not being able to identify the full extent of their injuries, and so forth. But those who would take advantage of 502(b)(9), they're the --

MS. BACHTELL: 50 --

THE COURT: -- trade.

MS. BACHTELL: 503(b)(9)?

THE COURT: 503(b)(9).

MS. BACHTELL: Yeah. Yeah.

THE COURT: I'm sorry. They're just --

MS. BACHTELL: No problem.

THE COURT: They're the trade.

MS. BACHTELL: Um-hum.

THE COURT: Why should they get any better treatment than any other trade creditor in any other case?

MS. BACHTELL: I understand that that's your concern --

THE COURT: Okay.

MS. BACHTELL: -- Your Honor. And if that's your ruling, it's acceptable to the UST.

THE COURT: Okay.

MS. BACHTELL: Thank you.

THE COURT: Thank you.

Does anyone on the telephone wish to be heard?

MR. GROSSMAN: Yes, Your Honor. This is Steve Grossman, who represents Inspira Health Care (sic) and Inspira Medical Centers.

THE COURT: Yes, sir.

MR. GROSSMAN: I want to thank you, first of all, for allowing the courtesy of us being able to appear by phone

today. I also want to extend thanks to the trustee for reaching out to Inspira and, I believe, some other healthcare providers, with respect to the objections that were filed, and for listening and trying to resolve those objections; and we feel we've done a very good job at that.

What I'd like to address, and I feel a need to address, are many of the issues that have been raised by the PSC and some of the confusion that that may be -- that may have created as to what is the universe of potential claims. What the PSC has not been clear about and what forms, I think, the basis of their objection, is who are the victims and the potential claimants. The PSC believes alone and, I believe, since the trustee has agreed to what has been presented in the amended motion, or that is their motion, and the creditors' committee supports that motion, it's the PSC alone that believes that notice, actual notice, should go to any patient who got any NECC product, and that's not correct.

As the trustee established, the potential claims against the estate relate to three specific lot numbers of NECC MPA that were administered after May 21st, 2012 and only three other NECC products, with nine specific lot numbers, produced after June 6, 2012. That's the universe of potential claims; nothing more. There's no evidence that any other lot number, any other product, has been contaminated or that any other patient may be at risk according to the CDC. No

healthcare provider should be required to provide the names of patients who were not exposed to those three lot numbers or those nine specific lot numbers of the other products.

The PSC is attempting in this court, as they've tried to do so, so far, and failed to do so in the MDL, to create claims where none exist, by obfuscating the medical literature to suggest that there is an unknown latency period for those who receive contaminated NECC products. What the PSC has failed to inform the Court about is that all of the studies on which they rely and cite in their opposition evaluated patients exposed to only the three specific lots of MPA administered after May 21st, 2012; no other products, no other lots. As such, these studies have nothing to do with any other NECC product as the PSC suggests, or in any way provides the basis for them to be able to believe that notice should go beyond that or that there would be potential claims beyond those particular products.

Inspira's a hospital that's been treating patients tied to the outbreak relating to these three specific lots of MPA, and continues to do so today. Inspira's on the frontlines of treatment of these patients that have been affected by what NECC has done. But the patients being treated and those who the CDC assessed were at risk, which includes those who may be at harm in the future, relate only to those three specific lot numbers of MPA administered after

May 21st, and no more.

As we said in our brief, but I think it's important to reiterate today, if the CDC or any federal, state or health -- or local health authority had evidence or believed in any way that the contamination or the outbreak or potential patient risk was linked to any other product or lot number other than the three lot numbers of MPA and those nine specific lot numbers of the three other products, they would have required Inspira and every other clinic to notify each patient to ensure that those patients were evaluated and for the CDC to assess the risk. That did not and has not happened.

And to respond to the PSC's comment today in court that they have no idea of the success of notice, the CDC Web site suggests -- or it's on the CDC Web site, to my knowledge, that ninety-nine percent of those patients were contacted. To provide actual notice to any patient who ever received any lot of MPA or any other product in the last two to five years, or to anyone who did not get an injection from one of the three specific lot numbers of MPA, would be reckless and harmful to those patients.

If there is a concern about patients as the PSC suggests, it wouldn't be advocating to cause them harm by notifying them, implicitly telling them that they are at risk for meningitis or related infections, serious issues, when

there's no evidence -- and indeed the PSC has provided no evidence to this Court or to Judge Saylor in the MDL court -- that these patients are at risk and, therefore, potential claimants. We agree with the trustee that actual notice, if any, should be limited to those patients who may be at risk and who may file a claim if they are provided notice, which are those patients that were administered one of the three specific lots of MPA after May 21st, 2012.

We'd also like to address some of the comments the PSC made about requiring more information about third parties who might be responsible, or at least should be in the notice for third parties who could be -- where plaintiffs could be potentially barred, or claimants potentially barred, against third parties other than the debtor. The notice provisions the PSC requests aren't designed to do anything other than, we believe, to help the PSC, in the plaintiffs bar (ph.), obtain new clients. The waiver (ph.) consumer-friendly or pointing to language that suggests that there's claims against the hospitals, clinics or doctors, including mislabeling or malpractice claims, is beyond any provision we're aware of that's required for the notice.

Interestingly, and despite what the PSC represented today in court, there's no other category of entities specifically named, other than healthcare providers. There's no mention of testing facilities, cleaning companies, sales

companies, or any affiliated defendants such as the owners and principals of NECC, that are named in the new notice that the PSC drafted. Such language, we believe, is unnecessary to advise patients of their potential claims against the debtor.

Our recommendation, which we believe is agreed upon by the trustee based on what has been submitted to the Court, and apparently the CC -- or the creditors' committee also supports given their representation today in court, is to simply identify any other potential parties as simply any other party, which Inspira did as an accommodation to the trustee in lieu of fighting to have the entire reference removed entirely.

Since the inception of the MDL and the creation of the creditors' committee, the PSC has pushed very hard to move this case at lightning speed against the healthcare providers, and advocated an early bar date in order to have leverage against healthcare providers, to come to the settlement in exchange for some type of release or channeling injunction. Yet today the PSC says it's not critical to go forth in that fashion. I think they take that different position today for the bar date, for personal-injury claimants, or at least trying to separate out the personal-injury claimants that they not be set -- or the bar date not be set as to them or be deferred, because they don't want Your Honor's ruling to impact their attempt to obtain a treasure trove of patient

information in the MDL, through the use of eighty or more subpoenas to healthcare providers, for information on patients that have no connection to, and never received any injection of, one of the three specific lot numbers.

If Your Honor limits that scope here to those affected lots, the PSC won't be able to continue their fishing expedition in the MDL or even here. There has been enough harm and the potential for harm to the patients who actually received one of the three specific lots of MPA after May 21st, 2012; we believe there's no need to create more based on speculation and the desires of the plaintiffs' steering committee.

Finally, we object to the creditors' committee request in their objection that notice intermediaries, like Inspira, include a cover letter with the notice that they may be ordered to provide. Not only should there be no cover letter included; it should clearly not include one with the wording "the creditors' committee suggests", which is, "This office, clinic or facility -- select one -- has been directed to send you the enclosed bankruptcy notice, based upon our records showing you were administered or prescribed a product made by New England Compounding Center. This notice explains who you can contact for more information or to answer your questions about the notice," end quote.

First, there's no reason for any cover letter, as

the notice documents are sufficient. The patients who received or may have received an injection of one of the three specific lots of MPA were already contacted by Inspira and other health -- and the other healthcare providers who are on this phone likely, as required by the CDC and other federal, state and local health authorities. Some were contacted on a weekly basis, and those who were asymptomatic were contacted on a monthly basis through March 2013. This pattern and required contact with patients is unique to this case. Getting the notice, proof of claim and the addendum as drafted, without more, as a result of NECC's bankruptcy, is not going to come as a surprise or be the first time that these patients are reminded that they may be at risk because of their exposure to NEC's (sic) MPA.

As such, there should be no cover letter required, whether sent by a claims administrator or Inspira or other healthcare providers. If the Court does require that the cover letter be included, it should be amended to be -- to more accurately reflect the patient receiving it. Right now it is not limited to the three specific lots of MPA at issue. And the cover should not create a concern that other MPA or other NECC products could have harmed them, when there's no evidence as I described earlier.

Also, there's no reason to identify Inspira or any other healthcare provider in a cover letter, as it provides no

benefit to the patient or the recipient, and will invite calls or other inquiries to Inspira, which is, I don't believe the purpose. As such, we request that no cover letter be required at all, or revised to accurately reflect the patients who are being sent a notice, and not include any reference or identifying information concerning Inspira.

I think the last point the PSC made for a joint session is really not necessary. The scope of the claims and the potential claims are pretty clear.

For these reasons and for those set forth in our brief, as well as for the reasons the trustee has expressed, we respectfully request that the bankruptcy court issue the bar-date order contained in the trustee's revised notice, with the exception of the language including the identification of mislabeling or malpractice claims, as well as the naming of healthcare providers as an entity the patients may have a potential claim against. We also request that there be no cover letter requirement with the notice. Thank you, Your Honor.

THE COURT: Thank you very much.

MS. BACHTELL: Your Honor, Paula Bachtell for the U.S. Trustee.

THE COURT: Yeah.

MS. BACHTELL: May I make one final point?

THE COURT: Yes.

MS. BACHTELL: Thank you, Your Honor. I just wanted to raise one other issue and it relates to Code Section 107 and the public-access-to-papers provision. Your Honor, this is an instance -- I'm referring to the matter of the protection of the information placed on the face of the proofs of claim. Your Honor, I just want to submit to the Court that there's a general rule with respect to public records being open to examination under Section 107, and thus far there really hasn't been any discussion or offer of proof that would put the Court in a position to protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title. But I just wanted to raise that as well, as another reason that the information contained on the face of the POC should remain in a public realm. Thank you.

THE COURT: Thank you.

Anyone else on the phone?

MR. MEISLER: Yes, Your Honor. This is Ron Meisler of Skadden Arps. Your Honor, I represent Insight Health Corporation; we're one of the parties that filed an objection.

Your Honor, as a threshold matter, we believe that what the debtor is requesting of notice intermediaries, and that is, directing them to send notice or otherwise imposing upon them to do something, that's a mandatory injunction. And, Your Honor, I think it's been well established in case

law, and it's statutory, that for a debtor to seek a mandatory injunction or equitable relief, Rule 7001 applies, which makes this motion procedurally defective. And, Your Honor, even if they filed an adversary, there's no cognizable right to impose this kind of relief on a third party that has no property to the estate and that is otherwise not currently involved in the bankruptcy.

Your Honor --

THE COURT: You want me to write a decision that says that your client won't cooperate for technical reasons, won't send information to its patients who may have been harmed? Is that what you're looking for?

MR. GROSSMAN: Your Honor, I don't think that the debtor can ask from us, the third-party healthcare provider -- I don't think they can ask for us to do anything at this point.

THE COURT: It's a lawyerly response, not a business one. Go ahead.

MR. GROSSMAN: Your Honor, look, we're bound by HIPAA and we've got certain requirements.

THE COURT: HIPAA doesn't apply. Go ahead.

MR. GROSSMAN: Your Honor, what the debtor -- Your Honor, actually, I'm going to need clarification on the application to HIPAA, because if what they're looking for are patient contact information --

THE COURT: Keep on -- keep --

MR. GROSSMAN: -- we're --

THE COURT: Keep on going, counsel.

MR. GROSSMAN: Thank you. Your Honor, the trustee likes to argue that 2002 is what applies and gives this Court the authority to direct us to provide notice. Your Honor, that's not what 2002 is meant for. 2002 is meant so that in the larger cases where the Clerk of the Court can't handle the claims and noticing, that this Court and courts around -- bankruptcy courts around the country can direct a claims and noticing agent to assist, or otherwise puts that burden on the debtor in Chapter 11. It's not an obligation that should be imposed upon third parties.

Your Honor, it's also important to note that the debtor doesn't need third parties like us to go through our own books and records and to provide notice. The law is clear. The Fifth Circuit's opined on this. The Third Circuit's opined on this. The courts in this district have opined on this. The notice requirement is for the debtor to search his own records. But to ask us to search our records and to be in essence their agent, simply goes -- it goes too far. The debtor has publication notice; we think that's appropriate for those parties that the debtor doesn't have contact information in its own books and records.

Your Honor, put simply, we share the same skepticism

that Judge Saylor does. We do think that they've got a procedural issue. We think also that they've got a jurisdictional issue. In fact, if they were asking for this information pursuant to the subpoena, they would have to do it through the court in which -- the court that has jurisdiction over us and the other notice intermediaries; they couldn't do it straight out of the district court in Massachusetts.

Your Honor, they also try to compare us to banks and brokers in the solicitation context. I think it's important to note that that's not comparable. The banks and brokers are already obligated to provide notices to their customers who hold debt or equity with the banks and brokers. So we don't think that that analogy applies.

Your Honor, for those reasons, we believe that this motion, with respect to its request on notice intermediaries, is improper and should be rejected.

Your Honor, to the extent that you see our objection on this ground differently, we have three remaining issues with respect to the request. Two of our -- we have five issues to begin with; two have been resolved. By the way, the trustee has changed its procedures. The two have to do with the scope; we said the scope was too broad. Now that the trustee is limited to three specific lots, we're okay with that. With respect to the form of notice and requiring clarification, again, the trustee did clarify that. And the

three remaining issues are: reimbursement of expenses; a clear and specific statement that there's no liability on account of providing notice; and three, to the extent, again, that you disagree with our perspective that we cannot be directed, we would also request that there be a duty that a notice intermediary simply provide commercially reasonable efforts to identify the contact information of its patients.

Your Honor, just to touch on reimbursement of expenses, we think it's inappropriate that the debtor shifts the burden and the cost related to notice, onto the notice intermediaries. Donlin Recano -- it's a noticing agent, and they can't take advantage of what we perceive as HIPAA issues, to shift that cost and burden onto us and parties that are similarly situated.

Your Honor, I think the other two points are clearly stated in our objection, and with that, Your Honor, you've heard our perspective.

THE COURT: Thank you.

Anyone else on the phone?

All right, hearing --

MS. WEINER: Your Honor --

MR. LIPTON: Your Honor --

MS. WEINER: -- this --

MR. LIPTON: Your Honor, this is Mark Lipton for the PSC, and I'm not sure if you want to hear again -- I just

have, like --

THE COURT: Well, before I hear from you, sir, I thought I heard somebody else speak up.

MS. WEINER: Yes, Your Honor. This is Cara Weiner. I represent nonparty Erlanger. I respect the Court's time and, if you don't mind, I just have a couple of minutes, at most, of objections --

THE COURT: Go ahead.

MS. WEINER: -- that I wanted to raise and point -- first, Your Honor, I do appreciate that the trustee reached out to us. We are in full agreement with the objections that he filed, docket number 372; they address our major concerns. Our position is a little bit different than some of the other healthcare providers, in that my client, nonparty Erlanger, did not receive any of the tainted medication; specifically, they did not receive the MPA nor any of the other drugs that may be considered tainted. At this point the only evidence of harm is from the three MPA lots, and my client didn't receive any of those lots.

Therefore, requiring my client to notify anybody is certainly outside the scope of what we think this bankruptcy is about. And moreover, our client is unable to identify patients that specifically received other lots -- other drugs from NECC. That is, as you'll see in our objection, our client did receive other medications from NECC and other

providers. We cannot differentiate necessarily what vendors we used to give certain adult patient medications.

Therefore, requiring us to give a list of patients who may have received NECC products but may have received products from a different vendor would be a violation of HIPAA and would be outside the scope of what this bankruptcy is about.

If you have any questions for us, Your Honor, I'm happy to answer them. But in the interest of this Court's time, I'll stop talking.

THE COURT: Thank you.

Anyone else other than Mr. Lipton?

Okay, Mr. Lipton, go ahead.

MR. LIPTON: Well, I want to thank you again, like everyone else, Your Honor, for allowing me to do this from my office rather than traveling to Boston. I think that it's paramount for all the lawyers here that we're trying to preserve the assets of the estate.

THE COURT: Well, if you had gone to Boston, it would have been the wrong place anyway.

MR. LIPTON: That's true. That's true as well, Your Honor. So, saved double time.

So let me -- I'm going to be brief. I'm going to try very hard not to reiterate or repeat anything.

The PSC's position is -- supported our papers as it

relates to a bar date, and at least specifically as it relates to the victims. I do think that the Court has the authority to differentiate between the victims of the NECC debacle and the businesses, with regards to setting the bar date. And I just want to point out that from the very beginning of this bankruptcy, it was represented by NECC, with the original trustee that they chose and then the trustee now, that this entire process is being designed to move for the benefit of the patients who have been victimized. And I don't want to lose sight of that, and that's why I think that, unlike even in normal bankruptcy, it's important to bend over backwards to make sure that the right people get notice of -- before we start looking to bar claims.

I heard Mr. Baldiga talk a lot about that we need to maybe -- to cut down -- create a bar date so that we can close a number of claimants and move this thing forward. But at the end of the day, it's really about cutting out potential injured people, and that is really who this -- the reason why we're in this bankruptcy court, at this point anyhow.

The rest of those comments I'll leave to the brief.

I want to just touch on a couple points that I did not hear notice -- or raised, I mean. And the issue of the notice to third-party -- or notice intermediaries, and I think the gentleman from Skadden Arps mentioned it, but I also heard it before, the complaint that the trustee or the debtor should

be responsible for notifying the patients. Your Honor, I need to make sure that you're aware that many of these clinics, certainly not all but many of them -- and I happen to be from Michigan, so I can speak specifically about the documents that I've seen from the Brighton clinic, which is one of the two clinics in Michigan from whom at this point the majority of the patients are coming from. And in fact, Michigan has more injured people, according to the CDC, than any state. At least one of those clinics, when it was submitting its forms to NECC for medications, was not providing any patient names. Now, that was a violation by the debtor, and it was a violation of applicable law by the clinic, but it means that the debtor does not have in their possession the names of a majority of the Michigan victims, and the Michigan victims that represent the majority of the known identifiable -- identifiably sick people from the lot -- from the MPA lot.

So there's a good reason to -- at least as it relates to the clinics that violated the law by not providing the names of their patients to NECC, to require them to -- if you were to impose a bar date at some point, whether it's now or later, on the patients, to require them to in fact either give those names to the trustee or notify them themselves.

And the second point I want to just make mention of, and we haven't really discussed it all either, has to do with the addendum. So I do understand someone argued and made it

clear that the addendum -- I think this was the U.S. Trustee -- made it clear that the addendum itself would not be a public record. But I want to point out that under all of the proffered rationales that I've heard and that were written about, none of them, at least now, require -- or should require a patient, or an attorney on behalf of the patient, to complete those lengthy addendums, because the information in there, by all the medical literature -- it's clear that no one knows today what these patients' condition is going to be even in the next two or three months.

I could speak as an attorney representing a number of clients who have thought that they were out of the woods, who then subsequently had relapses and have ended up back in the hospital and had surgery, when they thought that they had been treated already and had already made it through and put this behind them. So in -- the literature's already replete with information that the physicians don't know what the long-term effects are. If you require a patient, as part of a proof of claim in the next thirty, sixty or ninety days, to prepare and respond to this addendum, and then at the minimum ninety (sic) to six months after that, before a plan is in a position to be distributed, they're going to have to prepare -- complete those forms again, which, again, in the interest of reducing cost both to the victims and to the estate and also to the attorneys around the country who are

representing these people, it doesn't make sense to essentially have a snapshot today that is going to -- that is going to be required to be redone again.

So I would urge that the -- any order that you issue, if you decide to do a bar date as one bar date now or if you decide to split them up, you do not require the completion of an addendum until such time as there's actually money to distribute, which is going to be sometime after the bar date anyhow.

And I think the rest of the stuff has been covered in the briefs and by counsel, so I'm going to pause at that point. And I want to thank you again for your time.

THE COURT: Okay. Well done. All right. Let me start out by providing my perspective as to the delineation of the job that I have and the job that I think the district court has taken on. And I preface that by reminding those of you that are familiar with the Bankruptcy Code and Title 28 of the United States Code that any time that the district court chooses to do so, it may withdraw the reference from this court and deal with the whole ball of wax. Until and unless it does that, then the following delineation is, I think, what I'm doing and what I think the district court is doing, and the delineation is created not as a result of anyone's choice, as much as it is statutory and constitutional requirements.

The bankruptcy court's job here is to marshal the

assets of the estate, to approve a mechanism for distribution of the proceeds of those assets to allowed claims, and to liquidate claims that are neither personal injury nor wrongful death claims. Those are the primary functions of this court. The primary function of the district court, so long as it chooses to do so, as I indicated, is to liquidate the personal injury and the wrongful death claims. Frankly, I think I've got the better of the deal.

The parties differ on whether there needs to be an early bar date for the victims. I agree that there should be, not so much an early but an earlier, relatively speaking, bar date. The goal is to get everybody around the table, and I don't think that that can be appropriately done unless the victims are required to file claims.

Now, which victims should that be -- or I should say what persons should that be? And those should be those people who received products that the CDC said were contaminated. Not everybody that any NECC ever dealt with, and not people who, under any stretch of the imagination might have had some contact with NECC. The CDC has identified the contaminated lots. Those are the people who need the actual notice. Again, those claims are not going to tell us very much. They're not going to give us very much information about the ultimate liquidation value of those claims. And if the district court wants to fashion some sort of a secondary

notice or to appoint some mediation intermediary in order to resolve these claims, I wouldn't be surprised. But this court's job is to get everybody around the table that should be around the table.

Now, the parties differ as to what the notice intermediaries should -- who they should be. Well, they should be those entities who administered the contaminated product. Again, not everybody who administered any NECC product over a stated period of time. They ought to be required to produce, for the Chapter 11 Trustee -- as well as the PSC, but I leave what should be produced for the PSC to District Judge Saylor. But they ought to produce a list of the names, the addresses, the last four digits of Social Security numbers, so that they can be separately identified for those with similar names, and what was administered to, when, and by whom. I really can't see anything else of value that would be put to good use.

The Chapter 11 Trustee ought to be sending the notices to all of those people, and that list, by each of the notice intermediaries, ought to be supplied in short order. The request for reimbursement for identifying the names of patients, who probably have already been identified to the CDC, has a level of arrogance that I won't even begin to address.

The PITWD -- and I think that the creditors'

committee called it something else, but the supplement, again, ought to be extremely limited because of its limited value. The notice should not identify any particular third-party targets. It's enough, it seems to me, if it says to the claimant that your failure to file a claim in the NECC case may affect your rights against parties other than NECC. That ought to be enough to give them a clue as to who those parties might be. And I think being more specific and identifying classes of likely third-party targets paints a target on those entities that is inappropriate.

HIPAA is not a problem. HIPAA contains the exception for information requested supplied by court order. In the order that I'm going to ask the Chapter 11 Trustee to prepare, we'll say that in the Court's view, HIPAA is satisfied by the terms of the order.

As for these different noticing agents, I think that the PSC, understandably, views this proceeding much differently than does this court. This is a case here about all of the creditors. The victims of these adulterated products are clearly the vast majority, and undoubtedly, the most sympathetic. But to have a separate noticing agent for the PSC, whose job it also is to collect claims and deal with plan votes, if that time ever comes, with respect to -- it simply creates confusion if we're going to have secondary notices, one for nonvictims and one for victims.

Accordingly, this court is happy to consider any change that the Chapter 11 Trustee and the creditors' committee in the bankruptcy case, with the advice of the PSC, recommends to change noticing agents, in the event that one of them is less expensive than the other. And the parties know how to file a motion seeking to substitute one notice agent for another. But that noticing agent must come from the bankruptcy court, which is responsible for a larger class of creditors than simply the victims of these adulterated lots.

I've already indicated my unwillingness to disrupt the 503(b)(9) deadline that is addressed in the Local Rules.

Just going down my list of the different issues that were raised, a number of the objections addressed the problem of statutes of limitations that might extend for periods well after the bar date. Well, frankly, that's what bankruptcy is all about. We don't wait for the statute of limitations, because that delays recovery for creditors. Creditors who have claims must state those claims. It's okay that they're unliquidated. It's okay that they're contingent. But they must identify the claims in order to participate with other creditors. Claims filed can always be amended, so long as they're not substantively different. So a creditor who has incurred loss as a result of one of these adulterated lots, and whose illness progressed thereafter, is always free to file an amended claim. And even untimely claims may be

allowed under the Pioneer -- the Supreme Court's Pioneer case, in Chapter 11 cases, so long as the failure to file the claim was by virtue of excusable neglect and the estate has not been unduly prejudiced.

And so I have no problem with telling these creditors that in fact if they fail to file a claim they may be barred from doing so thereafter. But rather than using the words "shall be forever barred", I'd either prefer "may be barred", or if "shall be barred" is the choice of the Chapter 11 Trustee, that it be appropriately footnoted with an indication that it may be subject to amendment, and there may even be an opportunity for later filed claims. See the Pioneer case.

Hold on just a moment. Let me just make sure. Oh, one last thing that I think Mr. Lipton suggested, or perhaps it was Mr. Sobol, that this court may want to have a joint session with the district court. I'm not calling for that. If the district court finds it of value then I can make my way to Boston well enough. But so long as the district court is satisfied that I'm doing the job the way it would prefer, then I'm happy to do that from a distance. I'm happy to do a joint session, if that's what the district court wants, and I'm even happy to -- not happy, but I'm either content to send the file to the district court, if the district court chooses to withdraw the reference. At the moment, I don't see any

indication that the district court wishes to do that.

So now, in terms of timing. I'm going to ask the Chapter 11 Trustee to send me a proposed order, ordering the notice intermediaries who administered these adulterated lots identified by the CDC, to supply the names, addresses, last four digits of the Social Security number, what was administered and when, to the trustee on or before August 16. I then would ask the Chapter 11 Trustee and his counsel and counsel for the plaintiff steering committee to sit down and see if they can create a joint list of who it is that ought to get this actual notice.

Then I want the notice to be published ten days after the bar-date order, and then twenty days before the expiration of the order, in each of the newspapers which were listed in the trustee's amended supplemental bar-date motion. It currently reads that the trustee has the option to do that; I would prefer that the trustee be directed to do it.

And I assume that that list is a list of newspapers of general distribution in those places where the drug was administered. If somebody thinks that there ought to be another newspaper, then I'm happy to hear about that, and I would be happy to hear about it on August 22 at 10 a.m. in Springfield. Parties who wish to appear by phone, as they have today, are welcome to do so again.

On August 22, I'm hoping that what I will hear

counsel for the PSC and counsel for the Chapter 11 Trustee and counsel for the creditors' committee. What I will hear from them is that they have a list, with which they feel some degree of confidence is a list of all those who received the drugs from the allegedly adulterated lots. The notice intermediaries ought to use their best efforts to produce those names, for no other reason than that, of all the things that I may eventually release them from, I will never agree to release them from their original responsibility to have provided these names to the Chapter 11 Trustee. So they ought to do a good job, for their own sake.

So I'm hoping that I will receive the order from the Chapter 11 Trustee by week's end. And again, that's the order to the notice intermediaries to turn over those lists to the Chapter 11 Trustee and counsel for the PSC, in confidence, on or before August 16, and we'll address, again, on August 22 at 10 a.m. what modifications need to be made to the notice that's going to go out to these people and also to the nonvictims. I hope that you'll have for me a proposed revised notice consistent with what I've talked about in the last twenty minutes or so.

Thank you very much.

MS. BACHTELL: Excuse me, Your Honor?

THE COURT: Yes?

MS. BACHTELL: Will the Court order that the

proposed order include a reference to the face of the proofs of claim being -- remaining part of the public record?

THE COURT: Well, we can --

MS. BACHTELL: My apologies --

THE COURT: -- we can --

MS. BACHTELL: -- Your Honor.

THE COURT: -- we can talk about that, but I have to tell you -- we can talk about that on the 22nd. But --

MS. BACHTELL: Okay.

THE COURT: -- I have to tell you -- because we're not sending out yet the bar-date order; we're just -- on the --

MS. BACHTELL: I understand.

THE COURT: -- 22nd, we're talking about what that order's going to say. But I apologize that I didn't reach that question.

But I truly understand the role that the United States Trustee plays, but I can't help to think of on how many occasions attorneys, members of the bar, have sent me motions to impound, and messed it up so that before I could even reach it, the information was in the public record. In one instance, the attorney put the problem information in the motion to impound, and we had to grab it quickly. These mistakes get made with some regularity, and I'm very concerned about not -- complicating these people's lives by exposing

them in this way.

And I apologize; I meant to mention one other thing, and that is that when we talk about whoever it is that's going to be the claims agent, that public disclosure of who these people are, for my purposes in the bankruptcy court, ought to be by assigning them code numbers. And those code numbers, as Ms. Bachtell suggested, might be the substitute that the United States Trustee could eventually become comfortable with. I did something very similar to this in the Berkshire Hospital case, and you may want to talk to counsel for the debtor, Ropes & Gray, about what I did there.

I'm sorry, Mr. Baldiga?

MR. BALDIGA: Just one quick question, Your Honor. In your directions, you mentioned the OCC once and left the OCC out once, in terms of who is supposed to report on August 22nd as to whether we really have this. I just want to have clarified, given that you're going to be requiring these parties to make this list available to the trustee, to the PSC, and I believe you said to the OCC but I just didn't want --

THE COURT: Yes.

MR. BALDIGA: -- to leave that -- okay, thank you.

THE COURT: Yes.

MR. BALDIGA: That's all.

THE COURT: Also to counsel for the --

MR. BALDIGA: Counsel --

THE COURT: -- for the creditors' committee, subject to the confidentiality requirements that we've -- that have been contained in other orders, I think.

MR. BALDIGA: Absolutely.

THE COURT: Yeah, okay.

MR. BALDIGA: Thank you.

MR. STERNKLAR: Just want to be clear, Your Honor; the order -- Jeffrey Sternklar for the trustee. The order you're looking for by week's end, you want, is limited only to what it directs the notice intermediaries --

THE COURT: Right.

MR. STERNKLAR: -- to do?

THE COURT: Well, it will save a lot more time if you get a copy of the transcript of the last twenty or thirty minutes.

MR. STERNKLAR: I will.

THE COURT: Okay?

MR. STERNKLAR: But --

THE COURT: Okay.

MR. STERNKLAR: But -- so we're not actually setting a bar date now?

THE COURT: We're not setting a bar date. My guess -- just a guess -- is that where we're going to go is, if we have the list at the end of August, that that list goes

out sometime in September and that we give parties sixty days. At the moment that -- I find that attractive, but I certainly could be talked out about --

MR. STERNKLAR: And I'm sorry, Your Honor --

THE COURT: Yeah. Yeah.

MR. STERNKLAR: -- just a couple questions. You indicated that you wanted a form -- a revised form of notice that conforms to what you've talked about.

THE COURT: I would appreciate a draft of that, yes.

MR. STERNKLAR: When did you want that? You want that today?

THE COURT: No. I want that by August 16th as well --

MR. STERNKLAR: By August 16. I think we --

THE COURT: -- so that parties have an opportunity to look at it and --

MR. STERNKLAR: Okay.

THE COURT: -- and --

MR. STERNKLAR: Okay.

THE COURT: -- respond to it.

MR. STERNKLAR: Finally, Your Honor, you mentioned that there's -- you mentioned that the notice should contain some language to the effect that if creditors file a claim or not, they may be affecting their rights against third parties.

THE COURT: If they fail to file a claim.

MR. STERNKLAR: Well, I suppose our contemplation would be that the third-party releases would, if they're approved --

THE COURT: Right, but there are no third-party releases.

MR. STERNKLAR: Right, if the --

THE COURT: Third-party releases are unborn.

MR. STERNKLAR: I beg your pardon?

THE COURT: Third-party releases are unborn.

MR. STERNKLAR: Un?

THE COURT: They're not here yet.

MR. STERNKLAR: Yeah, oh, right. But at -- there is at least the open prospect it would be binding on those even if they do file claims or whether they don't. In other words, the only thing that the claim does is affects their rights against NECC. Whether they file a claim or not may have no bearing on whether they're bound by third-party releases against third parties.

THE COURT: That's why the word "may" is there.

MR. STERNKLAR: I'm sorry --

THE COURT: That -- I'm sorry. That's why the word "may" is there.

MR. STERNKLAR: Okay. Okay.

THE COURT: We just want to warn them --

MR. STERNKLAR: Okay.

THE COURT: -- as I think you tried to do, except that you raised the hackles of some of the notice intermediaries. We just want to warn them that sitting and doing nothing may not only affect their ability to get a distribution from NECC but may affect their ability ultimately to get recoveries from other parties.

MR. STERNKLAR: I suppose whether they do nothing or not may affect their rights against third parties at all; it only affects their rights against NECC. That's what I'm struggling with.

THE COURT: Well, ultimately it may impact if there are third-party releases, but I don't know where the case is going.

MR. STERNKLAR: I don't either; that's why I was thinking perhaps the notice simply needs to say, 'If you file a' -- 'don't file a claim, you may not have rights against NECC. You should consider' -- 'When you're considering whether to file a claim, you should be mindful of the fact that, regardless whether you file a claim, a plan may one day cut off your rights against third parties.'

THE COURT: Only a lawyer would understand that sentence --

MR. STERNKLAR: Well, I'm not drafting --

THE COURT: -- and barely. And I struggled.

MR. STERNKLAR: And I probably misspoke. But,

okay --

THE COURT: If --

MR. STERNKLAR: -- thank you, Your Honor.

THE COURT: If you want to fashion something a little bit different --

MR. STERNKLAR: That's fine.

THE COURT: -- it's an opportunity to do that for August 22nd.

MR. STERNKLAR: Okay. So this is an interim order, then, only for the --

THE COURT: It's an interim order. We're going to get the names and the addresses of these people.

MR. STERNKLAR: Got it.

THE COURT: And that's all we're going to do, except we're going to try to get a little closer to an agreement between all the parties that are managing these two proceedings, by August 22, and then see where we have differences.

MR. STERNKLAR: Thank you, Your Honor.

THE COURT: All right? Thank you.

IN UNISON: Thank you, Your Honor.

MR. CHRISTIE: Your Honor, is there an issue we can address telephonically?

THE COURT: I'm sorry, counsel. You mean on August 22nd?

MR. CHRISTIE: No, just an issue that you did not, I don't believe, cover in your rationale.

THE COURT: All right --

MR. CHRISTIE: This is William Christie.

THE COURT: -- you want to tell me quickly what that is?

MR. CHRISTIE: Yes. William Christie; I represent Pain Care. An issue that we raised and other clinics raised, while I understand your ruling on HIPAA that a court order would cover HIPAA, but we also raised in our pleadings that we are concerned that HIPAA's a 4 (ph.) and, above that, is doctor-patient privilege issues in providing names of patients to third parties, including the trustee. It was an issue that the district court was very concerned about last week in enforcing the subpoenas. And just our concerns moving forward, unless I misunderstood, I don't believe your verbal order addressed that.

THE COURT: I'm comfortable that my order satisfies those concerns, for these very limited purposes. And I'd ask the Chapter 11 trustee to put language in the order to that effect.

MR. STERNKLAR: Thank you, Your Honor.

THE COURT: Okay. Thank you.

(End of requested audio at 4:42 p.m.)

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C E R T I F I C A T I O N

I, Clara Rubin, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

July 29, 2013

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